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 VII
Minimum Sizes of Fish/Shellfish

August 12, 2005

AUTHORITY: These regulations are adopted pursuant to Chapters 42-17.1, 42-17.6, 20-4 through 20-10, and sections 20-1-2, 20-1-4, and 20-3-2 through 20-3-6, in accordance with Chapter 42-35-18(b)(5) of the Rhode Island General Laws of 1956, as amended.

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

TABLE OF CONTENTS

RULE #1 PURPOSE 3

RULE #2 AUTHORITY 3

RULE #3 ADMINISTRATIVE FINDINGS 3

RULE #4 APPLICATION 3

RULE #5 REGULATIONS ..... Part VII, p 4 - 37

RULE #6 SEVERABILITY 3

RULE #7 SUPERSEDED RULES AND REGULATIONS 3

RULE #8 EFFECTIVE DATE PAGE 38

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

PURPOSE

The purpose of these rules and regulations is to 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 42-35-18(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SUPERSEDED RULES AND REGULATIONS (#3609)

On the effective date of these rules and regulations, all previous rules and regulations, and any policies regarding the administration and enforcement of **Part VII (#3609)** shall be superseded**.** However, any enforcement action taken by, or application submitted to, the Department prior to the effective date of these Rules and Regulations shall be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 VII - MINIMUM SIZES OF FISH/SHELLFISH

7.1 Minimum Size of Quahaugs, Soft-Shelled 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) (RIMFC REGULATIONS) [Penalty - Part 3.3; (RIGL 20-3-3)]

No person shall take or have in his custody soft-shelled clams or mussels of a shell diameter less than one and one half inches (1 - 1/2") (taking the maximum shell diameter for soft-shelled clams and mussels), unless greater minimum sizes are established by the Rhode Island Marine Fisheries Council. (ref RIGL 20-6-11).

Penalty -- Any person who takes or possesses shellfish of less than the minimum size shall, upon conviction, be fined not less than ten dollars ($10) nor more than fifty dollars ($50) for each and every fifteen (15) shellfish taken or possessed; provided, however, that such penalty shall not attach if said person promptly returns the shellfish unmutilated to the same immediate water or shore area from which the quahaugs were first taken. (ref RIGL 20-6-11)

7.2 Oysters -- Minimum Size: Three (3) inches measured parallel to the long axis of the oyster. (ref 20-6-11) (RIMFC REGULATION) [Penalty - Part 3.3; (RIGL 20-3-3)]

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

7.4 Scallops -- Taking and Possession of Seed Scallops -- Every person taking any seed scallops, and failing 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 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)

7.5 Striped Bass -- Except as provided for in 12.3 and 12.5 no person, firm, or corporation shall possess any striped bass measuring less than twenty-eight (28) inches total length, whether caught within the jurisdiction of this State or otherwise. (RIMFC REGULATIONS) [Penalty - Part 12.2; (RIGL 20-4-11)]

7.6 Minimum sizes, other species -- Except as specifically noted, no person shall possess or take any of the following species which are less than the following minimum size

AMERICAN PLAICE (DAB): Commercial and Recreational 14"

ATLANTIC STURGEON: Commercial and Recreational - no possession

COD: Commercial - 19"; Recreational - 20"

EEL: Commercial and Recreational - 6"

HADDOCK: Commercial and Recreational - 19"

MONKFISH: Commercial and Recreational - 17". When possessed as tails either processed or mutilated the minimum length shall be 11"

POLLOCK: Commercial and Recreational - 19"

SCUP: Commercial - 9" and Recreational -10". Floating trap fishermen may possess undersize scup provided they are not sold, bartered, traded, and exchanged, but following culling, are taken to sea and <u>released back into the water</u>.

WEAKFISH (SQUETEAGUE): Commercial and Recreational 16"

WITCH FLOUNDER (GRAY SOLE): Commercial and Recreational 14"

YELLOWTAIL FLOUNDER: Commercial and Recreational 13"
All minimum sizes for the above listed fish shall be measured as total length (from tip of snout to tip of tail).
(RIMFC REGULATION) [Penalty - Part 3.3; (RIGL 20-3-3)]

<u>7.7 Fluke (Summer Flounder)</u> -- No person commercially licensed under RIGL 20-2-27 or RIMFC Part II shall possess or harvest any fluke which is less than fourteen (14) inches total length. A total annual statewide quota for fluke will be established. It shall be the most recent allocation established for the State by the Atlantic States Marine Fisheries Commission and/or the Secretary of the U.S. Dept. of Commerce and published in the Federal Register. The quota may be harvested by gear fishermen licensed in accordance with the provisions of Title 20 of the General Laws and in accordance with all rules and regulations promulgated by the R.I. Marine Fisheries Council. In order to provide for the orderly harvest of the quota the R.I. Marine Fisheries Council has established the following sub-period allocations:

<u>7.7.1 Summer flounder Sub-periods and Possession Limits</u>

<u>7.7.1-1</u> <u>Winter</u> Sub-Period: January 1 - April 30 annually.
Target allocation - 54% of the annual quota established in Section 7.7, unless modified pursuant to this part. It shall be unlawful to possess or land from a vessel, in any one calendar day, more than 700 pounds, or the poundage as provided in this part, of summer flounder during the period from January 1 through the Sunday of the first full week in February. The DFW may adjust the possession limit during the sub-

period based on the current catch rate and advice from fishing industry representatives and the Rhode Island Marine Fisheries Council.

a. **Any vessel which possesses a valid federal summer flounder moratorium permit if harvesting summer flounder from federal waters and possesses a valid state of Rhode Island summer flounder exemption certificate; or, if harvesting exclusively in State waters, any vessel whose operator possesses a valid license to harvest or land summer flounder for commercial purposes in Rhode Island and possesses a valid state of Rhode Island summer flounder exemption certificate, may opt to apply to obtain a permit from the Division of Fish and Wildlife in the aggregate landing program for summer flounder during the Winter I period beginning on the Sunday of the first full week in February and running through the Saturday of the first full week in April or until the program is terminated as provided in this part. The name of any applicant vessel deemed to satisfy the requirements for enrollment in the program shall be maintained on a list to be kept by DEM Division of Fish and Wildlife and DEM Division of Law Enforcement and is thereby authorized to land summer flounder in any amount between 0 and 2,500 pounds in any calendar week so long as the total landed by that vessel does not exceed 2,500 pounds in any calendar week. It shall be unlawful for the cumulative landings to exceed the weekly trip limit. The calendar week shall begin on Sunday at 12:00 AM and end on Saturday at 11:59 PM of each week. On the Sunday of the first full week in April or when 80% of the Winter I summer flounder quota has been harvested as determined by the Division of Fish and Wildlife (Division), whichever occurs first, the program will terminate and the possession limit per vessel shall be 500 pounds per calendar day.**

b. **The commercial possession limit of summer flounder for vessels that are not permitted in the aggregate landing program shall be 700 pounds per calendar day for vessels which possess a valid state of Rhode Island Summer Flounder Exemption Certificate. On the Sunday of the first full week in April or when 80% of the Winter I summer flounder quota has been harvested as determined by the Division of Fish and Wildlife (Division), whichever occurs first, the possession limit per vessel shall be 500 pounds per calendar day. It shall be unlawful for any person operating a vessel that is not permitted to participate in the aggregate landing program to land more than the poundage of summer flounder, as specified above, in Rhode Island during any calendar day commencing at 12:00 AM and ending at 11:59 PM of that same day.**

c. **The possession limit for vessels which do not possess a RI Summer Flounder Exemption Certificate is 200 pounds per day.**

d. **An applicant vessel shall be considered eligible for a permit to participate in the aggregate landing program for summer flounder by demonstrating to the satisfaction of the Division of Fish and Wildlife and the Division of Law Enforcement that it satisfies each of the following criteria:**

(1) The vessel if harvesting summer flounder from federal waters possesses a valid federal summer flounder moratorium permit and possesses a valid state of Rhode Island summer flounder exemption certificate, or, if harvesting exclusively in State waters, the vessel's operator possesses a valid license to harvest or land summer flounder for commercial purposes in Rhode Island and possesses a valid state of Rhode Island summer flounder exemption certificate;

(2) The vessel shall be operated by a person who possesses a valid multipurpose, principal effort, or landing license issued by the State of Rhode Island to land summer flounder for commercial purposes; and

(3) The vessel shall be operated by a licensed person who has not been assessed a criminal or administrative penalty in the past three years for a violation of Part 7.7 Fluke (Summer Flounder) et al. and/or Part 7.11 Scup Regulation et al. or more than one marine fisheries violation

e. **The operator of the applicant vessel shall strictly adhere to each of the following requirements:**

(1) The subject vessel shall be permitted from the date the participant enters the program until the end of the Winter I sub period or until the participant terminates enrollment by providing written notice of the termination from the program, whichever first occurs. Said termination shall take effect no earlier than the Saturday following the receipt of the written notice by the Division.

(2) A vessel may commence the application process for obtaining a permit to participate in the program by downloading the application from DEMs website, or may obtain one directly from the Division of Fish and Wildlife (401-423-1943) on Mondays and Tuesdays, from 8:30 AM until 4:00 PM during the entire Winter I sub period. The application must be filled out in its entirety and returned to the

Division of Fish and Wildlife (3 Fort Wetherill Rd Jamestown, RI 02835). The application will be reviewed by the Division of Fish and Wildlife and the Division of Law Enforcement and upon acceptance, a permit will be issued to the applicant vessel to take effect the first Sunday after the permit is received.

(3) No vessel shall possess simultaneously more than one aggregate landing program permit.

(4) The operator of any vessel permitted for the aggregate landing program shall only sell summer flounder to a dealer who is certified on a list maintained by the Division of Fish and Wildlife as a Standard Atlantic Fisheries Information System (SAFIS) dealer. A certified SAFIS dealer shall be defined as a dealer who is linked to the SAFIS reporting system and has demonstrated to the satisfaction of the Division of Fish and Wildlife its ability to make timely reports to the requisite governmental entities. A list of certified SAFIS dealers will be furnished to all permitted fishermen. A certificate attesting to the dealer's designation shall be posted through the Winter I Period at the dealer's facility.

(5) The information recorded by the SAFIS reporting system referenced in section (4) of this part shall be documented by the Division of Fish and Wildlife and the Division of Law Enforcement for use in accounting for the amount of summer flounder landed by a specific vessel during a calendar week.

(6) The State's copy of the Vessel Trip Report logbook or the reporting form provided by the Division of Fish and Wildlife shall be kept in numerical order on board the vessel and furnished upon request, including the name and address of the dealer where the summer flounder were landed. The vessel must have all reports dating back to January 1st on board the vessel.

f. Non-compliance with the provisions of these regulations or the permit agreement shall subject both the owner and the operator to revocation of enrollment and participation in the commercial fisheries for the subsequent Winter I fishery. If for any reason a Winter I fishery does not exist by regulation, the privilege of the owner(s) and operator(s) to commercially harvest fish shall be suspended for the same calendar time period as described in the current Winter I period upon adjudication.

Additionally, the owner(s) and operator(s) shall be subject to the imposition of a penalty pursuant to Part 3.3 (RIGL 20-3-3) and the 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".

g. If the Chief of the Division of Fish and Wildlife and/or the Chief of the Division of Law Enforcement determine that there has been non-compliance with the provisions of these regulations or the 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 Part 3.3 (RIGL 20-3-3) as well as the ineligibility to reapply for a permit for the subject vessel for the remainder of the Winter I period.

(1) Any person who feels aggrieved such a determination may seek 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.

(2) Any person who seeks an adjudicatory hearing relative to a determination to deny an applicant vessel a permit in the aggregate landing program for summer flounder must file said request in writing with the clerk of Administrative Adjudication Division, 235 Promenade Street, Providence, Rhode Island 02908 within thirty (30) calendar days of receipt of the contested agency action.

(3) The written request for hearing pursuant to Rule 8(a) or 8(b) must be received by with the clerk of Administrative Adjudication Division, 235 Promenade Street, Providence, Rhode Island 02908 with the time period indicated.

7.7.1-1.1 Any dealer which possesses a valid license to barter or trade in summer flounder may apply for a certification from the Division of Fish and Wildlife that it is qualified to purchase summer flounder from any vessel which is permitted by the Division of Fish and Wildlife in the aggregate landing program for summer flounder during the Winter I period beginning on the Sunday of the first full week in February and running through the Saturday of the last full week in April or until the program is terminated as provided in this part. A dealer is prohibited from purchasing or otherwise acquiring summer flounder from a permitted vessel during the above described period unless the dealer has applied to the Division for and obtained certification as a dealer who is certified on a list maintained by the Division as a Standard Atlantic Fisheries Information System (SAFIS).

a. An applicant dealer shall be considered eligible to be certified as a Standard Atlantic Fisheries Information System (SAFIS) Dealer if it signs a letter of agreement with the Division of Fish and Wildlife and the Division of Law Enforcement. A dealer who wishes to participate has the opportunity to sign the letter furnished by the Division of Fish and Wildlife during the month of December of the preceding year. The dealer must also satisfy each of the following criteria:

(1) The applicant dealer shall apply to the Division of Fish and Wildlife for the issuance of such certification to acquire summer flounder from vessel permitted in the in the aggregate landing program for summer flounder described in Part 7.7.1-1;

(2) The applicant dealer shall present evidence that it possesses a valid, current license to barter or trade in summer flounder;

(3) The applicant dealer shall demonstrate to the satisfaction of the Division its ability to make timely reports to the requisite governmental entities utilizing the SAFIS reporting system; and

b. The applicant dealer shall execute a written agreement with the Division attesting to the fact that dealer shall strictly adhere to each of the following requirements:

(1) The dealer certified as a SAFIS dealer shall file timely reports of acquisitions of summer flounder to all required governmental entities employing the SAFIS reporting system.

(2) The dealer shall display its certification attesting to its

designation as a SAFIS dealer at the dealer's facility.

(3) Should the dealer be terminated as SAFIS certified dealer, the dealer shall so advise permitted vessels of such termination prior to acquiring any summer flounder from such vessels.

c. Non-compliance with the provisions of these regulations or the dealer agreement shall subject both the owner and the operator to revocation of enrollment and participation in the commercial fisheries for the subsequent Winter I fishery. If for any reason a Winter I fishery does not exist by regulation, the privilege of the dealer to commercially sell fish shall be suspended for the same calendar time period as described in the current Winter I period upon adjudication.

Additionally, the dealer shall be subject to the imposition of a penalty pursuant to Part 3.3 (RIGL 20-3-3) and the 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".

d. If the Chief of the Division of Fish and Wildlife and/or the Chief of the Division of Law Enforcement determine that there has been non-compliance with the provisions of these regulations or the certification agreement, the dealer 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 dealer 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 certification agreement as well as the termination of certification and or the imposition of a penalty pursuant to Part 3.3 (RIGL 20-3-3) as well as the ineligibility to reapply for certification for the remainder of the Winter I period.

(1) Any person who feels aggrieved such a determination may seek 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.

(2) Any person who seeks an adjudicatory hearing relative to a determination to deny an applicant dealer certification as a SAFIS certified dealer must file said request in writing with the clerk of Administrative Adjudication Division, 235 Promenade Street, Providence, Rhode Island 02908 within thirty (30) calendar days of receipt of the contested agency action.

(3) The written request for hearing pursuant to Rule 9(a) or 9(b) must be received by with the clerk of Administrative Adjudication Division, 235 Promenade Street, Providence, Rhode Island 02908 with the time period indicated.

7.7.1-2 Summer I Sub-Period: May 1 - July 31 annually.
Target allocation – 17.5% of the annual quota established in Section 7.7, unless modified pursuant to this part. The possession limit per vessel will be 100 pounds per calendar day.

7.7.1-3 Summer II Sub-Period: August 1 - October 31 annually.
Target allocation – 17.5% of the annual quota established in section 7.7, unless modified pursuant to this part. The possession limit per vessel will be 150 pounds per calendar day.

7.7.1-4 Fall Sub-Period: November 1 - December 31 annually.
Target allocation - 11% of the annual quota established in Section 7.7, unless modified pursuant to this part. The possession limit per vessel will be 450 pounds per calendar day. Any unused portion of the quota from a 'sub-period' will be equally distributed to the allocations of the remaining sub-periods. The over-harvest of a sub-period allocation will be deducted from the allocations of the remaining sub-periods. Annually, the target allocations specified in sections 7.7.1-1 through 7.7.1- 4 shall be adjusted by the DFW to charge over-harvest of a sub-period allocation during a given year to the same sub-period of the next following year.

7.7.2 Summer flounder Trip Limits (possession limit)

7.7.2-1 Repealed 5/11/01

7.7.2-2 The possession limit may vary from the amount specified in sections 7.7.1-1 through 7.7.1- 4. Fish and Wildlife, after discussions with fishing industry representatives, will determine, based upon the

period of time remaining in the quota period and the current catch rate, whether the quota will be reached prior to the end of the sub-period. Having determined the catch rate and time remaining in the sub-period, Fish and Wildlife will decide whether the possession limit should be decreased or increased. Fish and Wildlife will file a notice with the Secretary of State's Office if the rate is changed, and publish a news release announcing the change in a newspaper of daily circulation throughout the State.

[Effective July 9, 2005 at 12:01 AM the possession limit for the commercial summer flounder fishery will be 150 pounds per vessel per calendar day, until the next sub period beings on August 1, 2005 with a possession limit of 150 pounds per vessel per calendar day.]

7.7.3 Summer flounder Mesh Regulations – Otter trawlers that land or possess 100 pounds (45.4 kg) or more of summer flounder from May 1 through October 31; or 200 pounds (90.8 kg) or more of summer flounder per trip from November 1 through April 30, must fish with nets or combinations of nets that have a minimum mesh size of 5.5 inch (14.0 cm) diamond, or 6 inch (15.2 cm) square mesh applied throughout the body, extension(s) and codend portion of the net.

7.7.4 Summer flounder Recreational Regulations

7.7.4-1 Size and Possession – No person fishing recreationally shall possess a summer flounder less than seventeen and one-half inches (17.5") total length, and no person fishing recreationally shall possess, per calendar day, more than seven (7) summer flounder whether caught within the jurisdiction of this state or otherwise. Compliance with the possession limit aboard vessels will be determined by dividing the number of fish on a vessel by the number of recreational fishermen onboard said vessel.

7.7.4-2 Season – The recreational season for summer flounder in Rhode Island waters is open from April 1 through December 31. The season is closed from January 1 through March 31. Possession of summer flounder taken from any waters of the state for recreational purposes during the closed season is prohibited.

7.7.5 Summer flounder Dealer/Shipping/Transfer/Reporting Regulations/Penalty --

7.7.5-1 Prohibition on the transfer of Summer flounder -- No Summer

flounder (Paralichthys dentatus), may be purchased, bartered, or sold within the State of Rhode Island unless marked, processed, shipped, labeled, and handled in accordance with the following rules:

a. All persons are prohibited from transferring or attempting to transfer at sea summer flounder from one vessel to another vessel, and the licensed person in charge of the vessel may only transfer summer flounder to dealers who possess a valid Rhode Island Dealer's License.

b. No licensed person in charge of the vessel may land summer flounder after 8:00 PM or prior to 6:00 AM. The legal hours for landing summer flounder are from 6:00 AM to 8:00 PM only.

c. The licensed person in charge of the vessel pursuant to RIGL Title 20-2 must notify the Rhode Island Office of Law Enforcement (401) 222-2284 or 222-3070 at least one hour prior, but not more than six hours prior, to offloading any commercial vessel which possesses more than 200 pounds of summer flounder or the maximum allowable possession limit or the lesser thereof. Said notice shall be provided by the vessel who will be involved in the transfer and must include the name of the dealer, the name of the vessel, the landing time, and the precise landing location.

d. All summer flounder must be weighed prior to the removal of the summer flounder from the dealer's premises or from the point of transfer.

e. The weight scales must be certified in accordance with Rhode Island law RIGL, Chapter 47-1.

f. All summer flounder may only be shipped out of state in standard 60 or 100 pound cartons (containers) unless specific prior written authorization is requested and received from the Rhode Island Office of Law Enforcement, 83 Park St., Providence, RI 02903.

g. All dealers are required to record and report all transfers of summer flounder in accordance with the following:

(1) Each dealer shall maintain a written record, on forms provided by Fish and Wildlife, of each summer flounder transaction at their permanent place of business in Rhode Island. Records must be available at the dealer's Rhode Island office for a period of three years.

(2) The record must include: date of purchase; time of purchase; location of purchase; the vessel name; the Rhode Island License Holder; the Rhode Island License number; the amount of summer flounder transferred.

(3) It is illegal for anyone to land summer flounder in Rhode Island more than once in a calendar day.

(4) Data forms must be signed by the Rhode Island licensed dealer or his agent and transmitted weekly to the Rhode Island Division of Fish and Wildlife: 3 Fort Wetherill Rd., Jamestown, RI 02835; Phone – (401) 423-1920; FAX - (401) 423-1925.

(5) The total weekly purchases in pounds of summer flounder must be reported by phone to the Rhode Island DEM Division of Fish and Wildlife: 3 Fort Wetherill Rd., Jamestown, RI 02835; Phone - (401) 423-1920; FAX - (401) 423-1925.

7.7.5-2 License Suspension:

a. In addition to the penalty prescribed in RIGL 20-1-16, the license of any person who refuses or neglects to make the report required herein will be suspended by the Director. The license of any person who knowingly or willfully makes a false report or violates any provision of these regulations may be suspended for a period not to exceed one year.

b. The Director has determined that non-compliance with these regulations seriously threatens the proper management of the available stock of summer flounder and, thus, the general welfare as represented that it is appropriate to suspend the license of alleged violators pending formal suspension or revocation hearing arising from the alleged violation.

c. No person shall take, sell, or possess within this state any summer flounder which have not been taken in compliance with the provisions of this regulation. Any summer flounder which the Director shall have reasonable cause to believe have not been taken in compliance with the provisions of RIGL Title 20 and the regulations adopted in accordance therewith shall be confiscated and sold by the Department of Environmental Management.

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

7.7.6 Moratorium on the Landing of Summer Flounder -- No person shall possess, land, sell, or offer for sale in excess of two hundred (200) pounds of summer flounder *Paralichthys dentatus*, in any calendar day, in the State of Rhode Island or the jurisdictional waters of the state without a summer flounder exemption certificate issued by Fish and Wildlife and a valid Rhode Island commercial fishing license. Application for a summer flounder exemption permit must be received by Fish and Wildlife prior to January 1, 1997.

7.7.7 Exemption Certificates -- Fish and Wildlife will issue an exemption certificate for a vessel if the owner of the vessel or his/her representative applies to Fish and Wildlife prior to January 1, 1997, for the issuance of such a certificate and demonstrates to the satisfaction of the Director that:

7.7.7-1 the operator of the vessel possesses a valid Rhode Island commercial fishing license to land summer flounder up to the amount permitted by the Rhode Island Marine Fisheries Council regulations; and

7.7.7-2 the subject vessel meets any of the following criteria:

a. the vessel was operated by a person who possessed a valid Rhode Island commercial fishing license and landed and sold in excess of one pound of summer flounder to a Rhode Island licensed dealer during the period from January 1, 1987, through December 31, 1992; or

b. the vessel fished exclusively in the Exclusive Economic Zone (EEZ) and landed and sold in excess of one pound of summer flounder to a licensed Rhode Island licensed dealer sometime during the period January 1, 1987, through December 31, 1992. The Department may require additional supporting documents including but not limited to the ship's logs, ice and fuel slips; or

c. the vessel replaces a vessel which was operated by a person who possessed a valid Rhode Island commercial fishing license, and the vessel being replaced landed and sold in excess of one pound of summer flounder to a Rhode Island licensed dealer during the period from January 1, 1987, through December 31, 1992, and if the vessel being replaced was lost by sinking or was otherwise destroyed, the replaced vessel is required to have been owned by the applicant at the time of the loss; or

d. the vessel replaces a vessel which fished exclusively in the EEZ and landed and sold in excess of one pound of summer flounder to a Rhode Island licensed dealer, during the period January 1, 1987, through December 31, 1992, and if the vessel being replaced was lost by sinking or was otherwise destroyed, the replaced vessel is required to have been owned by the applicant at the time of the loss.

e. If the vessel is replacing a vessel that was lost by sinking or was otherwise destroyed, documentation must be presented from a licensed insurance company, U.S. Coast Guard report, or some other valid evidence of ownership to the satisfaction of the Director.

7.7.8 Application for Certificate of Exemption -- A vessel is eligible to receive a Rhode Island Summer Flounder Exemption Certificate if it meets the following conditions. The applicant applying for an exemption certificate shall:

7.7.8-1 provide Fish and Wildlife with a copy of the operator's valid current Rhode Island commercial fishing license or non-resident landing license, and Federal Fluke Permit if the summer flounder is to be taken in the

Exclusive Economic Zone (EEZ); and

7.7.8-2 submit a completed notarized application for said certificate; and

7.7.8-3 submit proof that the vessel meets the requirements set out in 7.7.7 and

7.7.8-4 provide a completed notarized waiver authorizing the Department to access records verifying that this vessel and operator meet the criteria set forth in 7.7.7; and

7.7.8-5 provide Fish and wildlife with a copy of the vessel's U.S. Coast Guard documentation papers or state issued boat registration certificate proving ownership of the vessel. If replacing a vessel, proof of ownership for both boats is required, and

7.7.8-6 provide to the satisfaction of the Division of Fish and Wildlife proof that the applicant vessel is replacing a vessel which has been removed from the Summer Flounder Exemption Program (as described in 7.7.6)

(a) A vessel may be sold with all permits and history (state and federal) transferred together or without the vessel history and permits. A vessel owner may sever the permits and history in entirety from the vessel for the purposes of replacing the vessel. The vessel owner must supply credible written evidence verifying that the transferor/seller is retaining the vessel's fishing and permit history for purposes of replacing the vessel. If a vessel owner elects to sever permits and history from a vessel, the permits and history may be transferred only to another vessel owned by said vessel owner.
(b) Vessel permits, Certificates of Exemption, and fishing history cannot be split.
(c) Vessel permits or Certificates of Exemption may not be combined to create larger replacements vessels.
(d) The replacement vessel may not exceed a 10% increase in length overall (LOA), a 10% increase in gross registered tonnage (GRT) or net tonnage, or a 20% increase in horsepower of the vessel being replaced.
(e) Only one vessel upgrade based upon the original issuance of certificate is allowed for the Certificate of Exemption or permit.

7.7.9 Submission of Application -- Application for an exemption certificate shall be mailed or submitted prior to January 1, 1997 to the office of Fish and Wildlife at: Oliver Stedman Government Center, 4808 Tower Hill Rd., Wakefield, RI 02879, Attention: Fluke Exemption.

7.7.10 Transfer of permit or Certificate of Exemption –

(a) A vessel owner wishing to transfer any permit or Certificate of Exemption issued by the Division must apply to the Division for approval. If approved for a transfer, all vessel permits (state and federal) shall be transferred together only.

(1) any vessel permit or Certificate of Exemption and fishing history cannot be split;

(2) permits or certificates may not be combined to create larger replacement vessels;

(3) a vessel with a Federal Moratorium Permit or Certificate of Exemption can be replaced by another vessel and the permit transferred voluntarily

(4) Only one vessel transfer based upon the original issuance of certificate is allowed for the Certificate of Exemption or permit.

(b) Any permit or Certificate of Exemption issued by the Division pursuant to Title 20 RIGL is only valid for the person/vessel to which it is issued. In instances of a permitted vessel, the owner of that vessel may either transfer the permit or Certificate of Exemption along with the vessel to a new owner, or retain the permit or Certificate of Exemption and apply it within ninety (90) days to another vessel that he owns.

(c) Certificates of Exemption or permits may not be:

(1) pledged, mortgaged, leased, or encumbered in any way;

(2) transferred with any retained right of repossession or foreclosure, or any condition requiring a subsequent transfer; or

(3) attached, distrained, or sold on execution of judgement.

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

7.8 Winter Flounder (Blackback) -- No person shall take possess, sell, possess for sale, or offer for sale any winter flounder measuring less than twelve (12) inches total length whether caught within the jurisdiction of this State or otherwise. During a closure of the R.I. winter flounder fishery a vessel fishing in the Exclusive Economic Zone (EEZ) may traverse Rhode Island waters for the purpose of landing winter flounder provided they are not fishing and nets are stowed in accordance with Section 10.10 of these regulations.

7.8.1 Winter Flounder - Four fish recreational possession limit -- The taking and/or possession of winter flounder by recreational fishermen is prohibited with the exception that annually, beginning on the fourth Saturday in April and continuing for 30 days, and beginning on the last Saturday in September and continuing for 30 days, fishermen may take and possess not more than four (4) winter flounder in Rhode Island waters. Said fish shall not be offered for sale. The four fish possession limit shall not apply to fishermen licensed pursuant to RIGL 20-2-26, 20-2-27, 20-2-28, or 20-2-28.1, provided winter flounder possessed by those licensed in the above sections are harvested in

compliance with R.I. Marine Fisheries Council Statutes and Regulations.

<u>7.8.2</u> <u>Winter Flounder - Mesh Regulations/Commercial Fishing Gear</u> -- The minimum mesh size for bottom trawl nets is six (6) inch diamond mesh or six and one half (6.5) inch square mesh applied throughout the body and extension of the net, or any combination thereof, and six and one half (6.5) inch diamond mesh or six and one half (6.5) inch square mesh applied to the codend of the bottom trawl nets as defined in paragraphs (a) and (b) of this section. The minimum mesh size for gill nets is six and one half (6.5) inch diamond mesh or six and one half (6.5) inch square mesh applied throughout the net. Vessels may utilize commercial fishing gear with mesh smaller than the sizes referenced in this section provided they do not possess any winter flounder except as provided in Section 7.8.1.

(a) For vessels greater than 45 ft in length overall, a diamond mesh codend is defined as the first 50 meshes counting from the terminus of the net, and a square mesh codend is defined as the first 100 bars counting from the terminus of the net

(b) For vessels 45 ft or less in length overall, a diamond mesh codend is defined as the first 25 meshes counting from the terminus of the net, and a square mesh codend is defined as the first 50 bars counting from the terminus of the net.

7.8.2-1 Net obstruction or constriction

A fishing vessel subject to minimum mesh size restrictions shall not use any device or material, including, but not limited to, nets, net strengtheners, ropes, lines, or chafing gear, on the top of a trawl net, except that one splitting strap and one bull rope (if present), consisting of line and rope no more than 3 in (7.6 cm) in diameter, may be used if such splitting strap and/or bull rope does not constrict, in any manner, the top of the trawl net. “The top of the trawl net” means the 50 percent of the net that (in a hypothetical situation) would not be in contact with the ocean bottom during a tow if the net were laid flat on the ocean floor. For the purpose of this paragraph, head ropes are not considered part of the top of the trawl net.

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

<u>7.9</u> <u>Tautog (Blackfish)</u> -- No person shall take, possess, sell, possess for sale, or offer for sale any tautog measuring less than sixteen (16) inches total length whether caught within the jurisdiction of this State or otherwise.

<u>7.9.1</u> <u>Recreational</u> -- Except as provided in Part II, no person may possess

more than three (3) tautog from May 1 through October 14, annually, and no more than ten (10) tautog from October 15 through December 31, annually. Compliance aboard vessels will be determined by dividing the number of fish onboard a vessel by the number of recreational fishermen onboard said vessel.

7.9.2 Commercial --The total allowable harvest of tautog will be established annually, and will be that amount allocated to the State of Rhode Island by the Regional Fishery Management Council and/or the Atlantic States Marine Fisheries Commission. The quota may be harvested only by permitted gear types and licensed fishermen in accordance with all rules and regulations promulgated by the DEM and the RIGL Title 20. The quota shall only be available during the following seasons:

(a) April 15 – May 31: 1/3 of the annual quota established in this part shall be available from April 15 through May 31, unless modified pursuant to this part. It shall be unlawful to possess aboard or land from a vessel, in any one calendar day, more than ten (10) tautog during this period. The aggregate number of tautog on any vessel, regardless of how many licensed fishermen are onboard, may not exceed the ten (10) fish limit per day.

[Effective May 17, 2005 at 12:01 AM the commercial tautog fishery will be closed until the next sub-period begins on August 1, 2005 with a ten (10) fish per vessel per calendar day bag limit.]

(b) August 1 – September 15: 1/3 of the annual quota established in this part shall be available from August 1 – September 15, unless modified pursuant to this part. It shall be unlawful to possess aboard or land from a vessel, in any one calendar day, more than ten (10) tautog during this period. The aggregate number of tautog on any vessel, regardless of how many licensed fishermen are onboard, may not exceed the ten (10) fish limit per day.

(c) October 15 – December 15: 1/3 of the annual quota established in this part shall be available from October 15 – December 15, unless modified pursuant to this part. It shall be unlawful to possess aboard or land from a vessel, in any one calendar day, more than ten (10) tautog during this period. The aggregate number of tautog on any vessel, regardless of how many licensed fishermen are onboard, may not exceed the ten (10) fish limit per day.

(d) Within each period the allocation may be harvested until it is exhausted. Any unused quota not harvested during a sub-period will be carried forward into the next period and any over-harvest will be deducted equally from all periods in the next calendar year. No licensed commercial fishermen may possess more than ten (10) tautog in any calendar day. During a closure of the R.I. tautog fishery a federally permitted vessel

fishing in the Exclusive Economic Zone (EEZ), may traverse Rhode Island waters for the purpose of landing tautog in another state, provided their nets are stowed in accordance with Section 10.10 of these regulations.

7.9.3 Possession Limits for Charter and Party Boats -- Compliance aboard vessels will be determined by dividing the number of fish on board a vessel by the number of recreational fishermen on board said vessel. Said fish shall not be offered for sale. Party and charter boats may obtain a State permit by showing proof of a U.S. Coast Guard License to conduct their fishery within the territorial waters of Rhode Island.

7.9.4 Reporting requirements. -- For the purpose of determining the commercial landings of tautog in Rhode Island, and whether the landings are increasing or decreasing during any period, every person licensed to catch, possess, purchase, or sell tautog shall report weekly by telephone a record of the pounds of tautog taken, possessed, purchased, or sold in Rhode Island during the period for which such record is requested. Compliance in the party and charter boat industry will be satisfied through submission of the blue copy of the National Marine Fisheries Service fishing vessel trip report to Fish and Wildlife, or they must report weekly landings as requested by Fish and Wildlife. Provided, however, such returns from any person shall only be made public in a statistical format.

7.9.5 Closure of commercial fisheries managed under a federally mandated quota or allocation system. -- Any landing of a marine species managed under a quota or allocation system, or the taking or possession of any marine species, may be prohibited by the Director for a specified portion of the calendar year upon the finding by the Director that ninety percent (90%) or more of the annual quota is about to be harvested, and upon submission of a notice of closure to the Office of Secretary of State, and publication of the closure notice in a daily newspaper of statewide circulation. Further, it is the responsibility of the licensed person in charge of a vessel harvesting species regulated in this section to call the DEM hotline for current harvesting and possession regulations.

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

7.10 Bluefish - Possession limit for recreational fishermen -- No person shall possess more than ten bluefish unless he/she has a permit meeting the requirements of RIGL 20-2-26, 20-2-26.1, 20-2-27, 20-2-28, 20-2-28.1. Compliance onboard vessels will be determined by dividing the number of fish onboard a vessel by the number of recreational fishermen onboard said vessel.

7.10.1 Bluefish - Commercial Quota -- A total allowable harvest of bluefish will be established annually, and shall be that amount allocated to the State of Rhode Island by the Regional Fishery Management Councils and/or the

Atlantic States Marine Fisheries Commission. The quota may be harvested only by permitted gear types and licensed fishermen in accordance with all rules and regulations promulgated by the Rhode Island Marine Fisheries Council. To provide for the orderly harvest of the quota, the Rhode Island Marine Fisheries Council has established the following sub-period allocations.

7.10.2 Bluefish Commercial Quota - Sub-Periods

7.10.2-1 Spring sub-period - January 1 through June 30 annually. Quota - 50% of the annual allocation.

7.10.2-2 Summer-Fall Sub Period - July 1 through December 31 annually. Quota - 50% of the annual allocation.

When 50% of any seasonal sub-period quota is reached, Fish and Wildlife will determine if a possession limit of between 200 - 10,000 pounds should be established depending upon the time remaining in the quota period and the current catch rate. Fish and Wildlife will file a notice with the Secretary of State's office if a possession limit is established, and will publish a news release announcing the change. The possession limit may be modified by Fish and Wildlife providing such notification is made.

7.10.3 Bluefish - Reporting Requirement -- For the purpose of determining the commercial landings of bluefish in Rhode Island and whether the landings are increasing or decreasing during any period, every person licensed to catch, possess, purchase, or sell bluefish shall report weekly by telephone a record of the pounds of bluefish taken, possessed, purchased, or sold in Rhode Island during the period for which such record is requested; provided, however, such returns from any person or firm shall not be made public, shall be kept only in the files of said Division and be used only for statistical and fisheries management purposes.

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

7.11 Scup Regulations - Minimum Size - 9" total length (TL) -- It is unlawful for any person commercially licensed under RIGL 20-2-27 or RIMFC Part II, to land or possess any scup, or parts thereof, that do not meet this size limit. *[see Part 10.12 for gear roller regs]* (RIMFC REGULATION) [Penalty - Part 3.3 (RIGL 20-3-3) (RIGL 20-6-29)]

7.11.1 - Scup - Commercial Quota -- A total allowable harvest of scup will be established annually, and shall be that amount allocated to the State of Rhode Island by the Regional Fishery Management Councils and/or the Atlantic States Marine Fisheries Commission. The quota may be harvested only by

permitted gear types and licensed fishermen in accordance with all rules and regulations promulgated by the Rhode Island Marine Fisheries Council. To provide for the orderly harvest of the quota, the Rhode Island Marine Fisheries Council has established the following sub-period allocations.

7.11.2 Scup Commercial Quota - Sub-Periods

7.11.2-1 Winter Period I (January-April) –

a. **Any vessel which possesses a valid federal scup moratorium permit if harvesting scup from federal waters; or, if harvesting exclusively in State waters, any vessel whose operator possesses a valid license to harvest or land scup for commercial purposes in Rhode Island may opt to apply to obtain a permit from the Division of Fish and Wildlife in the biweekly trip limit program for scup during the Winter I period beginning on January 1 and running through April 30 or until the program is terminated as provided in this part. The name of any applicant vessel deemed to satisfy the requirements for enrollment in the program shall be maintained on a list to be kept by DEM Division of Fish and Wildlife and DEM Division of Law Enforcement and is thereby authorized to land scup in any amount between 0 and 30,000 pounds in any two calendar week period so long as the total landed by that vessel does not exceed 30,000 pounds in any two calendar week period. It shall be unlawful for the cumulative landings to exceed the biweekly trip limit. The two calendar week period shall begin on Sunday at 12:00 AM and ends on the second following Saturday at 11:59 PM. On April 30 or when 80% of the Winter I scup quota has been harvested as determined by the National Marine Fisheries Service (NMFS), whichever first occurs, the program will terminate and the possession limit per vessel will be 1,000 pounds per calendar day.**

b. **The commercial possession limit of scup for vessels that are not permitted for the biweekly trip limit program shall be 2,000 pounds per trip. It shall be unlawful for any person operating a vessel that is not permitted to participate in the biweekly trip limit program to land more than 2,000 pounds of scup in Rhode Island during any calendar day commencing at 12:00 AM and ending at 11:59 PM of that same day.**

c. **An applicant vessel shall be considered eligible for a permit to participate in the biweekly trip limit program for scup by demonstrating to the satisfaction of the Division that it satisfies each of the following criteria:**

(1) The vessel if harvesting scup from federal waters possesses a valid federal scup moratorium permit, or, if harvesting exclusively in State waters, the vessel's operator possesses a valid license to harvest or land scup for commercial purposes in Rhode Island;

(2) The vessel shall be operated by a person who possesses a valid multipurpose, principal effort, or landing license issued by the State of Rhode Island to land scup for commercial purposes; and

(3) The vessel shall be operated by a licensed person who has not been assessed a criminal or administrative penalty in the past three years for a violation of part 7.7 Fluke (Summer Flounder) et al. and/or Part 7.11 Scup Regulation et al. or more than one marine fisheries violation

d. **The operator of the applicant vessel shall strictly adhere to each of the following requirements:**

(1) The subject vessel shall be permitted from the date the participant enters the program until the end of the Winter I sub period or until the participant terminates enrollment by providing written notice of the termination from the program, whichever first occurs. Said termination shall take effect no earlier than the Saturday ending the biweekly period following the receipt of the notice by the Division.

(2) A vessel may commence the application process for obtaining a permit to participate in the program by downloading the application from DEMs website or may obtain one directly from the Division of Fish and Wildlife (401-423-1943) on Mondays and Tuesdays, from 8:30 AM until 4:00 PM during the entire Winter I sub period. The application must be filled out in its entirety and returned to the Division of Fish and Wildlife (3 Fort Wetherill Rd Jamestown, RI 02835). The application will be reviewed by the Division of Fish and Wildlife and the Division of Law Enforcement and upon acceptance, a permit will be issued to the applicant vessel to take effect the first Sunday after the permit is received.

(3) No vessel shall possess simultaneously more than one biweekly trip limit permit.

(4) The operator of any vessel permitted for the biweekly trip limit program shall only sell scup to a dealer who is a certified on a list maintained by the Division as a Standard Atlantic Fisheries

Information System (SAFIS) dealer. A certified SAFIS dealer shall be defined as a dealer who is linked to the SAFIS reporting system and has demonstrated to the satisfaction of the Division its ability to make timely reports to the requisite governmental entities. A list of certified SAFIS dealers will be furnished to all enrolled fishermen. A certificate attesting to the dealer's designation shall be posted through the Winter I Period at the dealer's facility.

(5) The information recorded by the SAFIS reporting system referenced in section [d. (4)] of this part shall be documented by the Division of Fish and Wildlife and the Division of Law Enforcement for use in accounting for the amount of scup landed by a specific vessel during a two calendar week period.

(6) The State's copy of the Vessel Trip Report logbook or the reporting form provided by the Division of Fish and Wildlife shall be kept in numerical order on board the vessel and furnished upon request, including the name and address of the dealer where the scup were landed.

e. **Non-compliance with the provisions of these regulations or the permit agreement shall subject both the owner and the operator to revocation of enrollment and participation in the commercial fisheries for the subsequent Winter I fishery. If for any reason a Winter I fishery does not exist by regulation, the owner(s) and operator(s) privilege to commercially fish will be suspended for the same calendar time period as described in the current Winter I period upon adjudication.**

Additionally, imposition of a penalty pursuant to Part 3.3 (RIGL 20-3-3) and the 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".

f. **If the Chief of the Division of Fish and Wildlife and/or the Chief of the Division of Law Enforcement determine that there has been non-compliance with the provisions of these regulations or the 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 Part 3.3 (RIGL 20-3-3) as well as the ineligibility to reapply for a permit for the subject vessel for the remainder of the Winter I period.

(1) Any person who feels aggrieved such a determination may seek 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.

(2) Any person who seeks an adjudicatory hearing relative to a determination to deny an applicant vessel permitted for the biweekly trip limit program for scup must file said request in writing with the clerk of Administrative Adjudication Division, 235 Promenade Street, Providence, Rhode Island 02908 within thirty (30) calendar days of receipt of the contested agency action.

(3) The written request for hearing pursuant to Rule 8(a) or 8(b) must be received by with the clerk of Administrative Adjudication Division, 235 Promenade Street, Providence, Rhode Island 02908 with the time period indicated.

7.11.2-1.1 Any dealer which possesses a valid license to barter or trade in scup may apply for a certification from the Division of Fish and Wildlife that it is qualified to purchase scup from any vessel which is enrolled by the Division of Fish and Wildlife in the biweekly trip limit program for scup during the Winter I period beginning January 1 through April 30 or until the program is terminated as provided in this part. A dealer is prohibited from purchasing or otherwise acquiring scup from a permitted vessel during the above described period unless the dealer has applied to the Division for and obtained certification as a dealer who is certified on a list maintained by the Division as a Standard Atlantic Fisheries Information System (SAFIS).

a. An applicant dealer shall be considered eligible to be certified as a Standard Atlantic Fisheries Information System (SAFIS) Dealer if it signs a letter of agreement with the Division of Fish and Wildlife

and the Division of Law Enforcement. A dealer who wishes to participate has the opportunity to sign the letter furnished by the Division of Fish and Wildlife during the month of December of the preceding year. The dealer must also satisfy each of the following criteria:

(1) The applicant dealer shall apply to the Division of Fish and Wildlife for the issuance of such certification to acquire scup from vessels permitted for the biweekly trip limit program for scup described in Part 7.11.2-1;

(2) The applicant dealer shall present evidence that it possesses a valid, current license to barter or trade in scup;

(3) The applicant dealer shall demonstrate to the satisfaction of the Division its ability to make timely reports to the requisite governmental entities utilizing the SAFIS reporting system; and

b. The applicant dealer shall execute a written agreement with the Division attesting to the fact that dealer shall strictly adhere to each of the following requirements:

(1) The dealer certified as a SAFIS dealer shall file timely reports of acquisitions of scup to all required governmental entities employing the SAFIS reporting system.

(2) The dealer shall display its certification attesting to its designation as a SAFIS dealer at the dealer's facility.

(3) Should the dealer be terminated as a SAFIS certified dealer, the dealer shall so advise permitted vessels of such termination prior to acquiring any scup from such vessels.

c. Non-compliance with the provisions of these regulations or the dealer agreement shall subject both the owner and the operator to revocation of enrollment and participation in the commercial fisheries for the subsequent Winter I fishery. If for any reason a Winter I fishery does not exist by regulation, the privilege of the dealer to commercially sell fish shall be suspended for the same calendar time period as described in the current Winter I period upon adjudication.

Additionally, the dealer shall be subject to the imposition of a penalty pursuant to Part 3.3 (RIGL 20-3-3) and the 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".

d. If the Chief of the Division of Fish and Wildlife and/or the Chief of the Division of Law Enforcement determine that there has been non-compliance with the provisions of these regulations or the certification agreement, the dealer 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 dealer 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 certification agreement as well as the termination of certification and or the imposition of a penalty pursuant to Part 3.3 (RIGL 20-3-3) as well as the ineligibility to reapply for certification for the remainder of the Winter I period.

(1) Any person who feels aggrieved such a determination may seek 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.

(2) Any person who seeks an adjudicatory hearing relative to a determination to deny an applicant dealer certification as a SAFIS certified dealer must file said request in writing with the clerk of Administrative Adjudication Division, 235 Promenade Street, Providence, Rhode Island 02908 within thirty (30) calendar days of receipt of the contested agency action.

(3)The written request for hearing pursuant to Rule 9(a) or 9(b) must be received by with the clerk of Administrative Adjudication Division, 235 Promenade Street, Providence, Rhode Island 02908 with the time period indicated.

<u>Winter Period II (November- December</u>) -- possession and landing limit is 3,500 pounds, decreasing to 500 pounds once 70% of the period quota is landed.

<u>7.11.2-2</u> <u>Summer-Fall Period (May - October)</u> A state quota for scup will be established annually for the Summer-Fall period and shall be the most recent amount allocated to the State of Rhode Island by the Atlantic States Marine Fisheries Commission and/or the Secretary of the U.S. Department of Commerce and published in the Federal Register. The total quota for will be divided as follows:

FLOATING TRAPS licensed by the state of Rhode Island – Sixty percent (60%) of the Summer-Fall period quota will be allocated to the floating trap harvesting sector. Fifty thousand pounds (50,000) of scup will be set aside from the floating fish trap quota at the beginning of the season annually. The quota allocated to the floating trap sector will be available during the following sub-periods:

MAY 1 – OCTOBER 31: The floating fish trap quota will be available on May 1. The possession limit will be 25,000 pounds per fish trap licensee* per calendar day. Once sixty percent (60%) of the sub-period allocation is projected to be harvested, the possession limit will be 10,000 pounds per fish trap licensee per calendar day. Once ninety percent (90%) of the sub-period allocation is projected to be harvested, the possession limit will be 1,000 pounds per fish trap licensee per calendar day. When one hundred percent (100%) of the quota has been harvested, the possession limit will be 200 pounds per fish trap licensee per calendar day until the 50,000 pound set aside has been completely harvested.

Annually, no later than August 1, the unharvested portion of the floating fish trap quota shall be made available to all gear types upon consultation with the floating fish trap industry representatives.

[Effective 12:01 AM, June 4, 2005, the possession limit for floating fish traps will be 1,000 pounds per fish trap licensee per calendar day.]

*** "Fish trap licensee" – for purposes of this section, fish trap licensee shall refer to a resident person or resident corporation currently issued a license pursuant to RI General Laws §20-5-2. The maximum possession limit per fish trap licensee shall be the amount set forth above regardless of the number of authorized trap locations, the number of vessels or the number of licensed fishermen who may be working for or may enter into contract with the fish trap licensee. While engaged in the operation of a fish trap, any licensed fisherman that may be working for or may enter into contract with the fish trap licensee waives any individual right to possess scup pursuant to a possession limit set out in RIMF Regulations Part 7.11.2-2.**
Dealers are required to report scup landings daily to the DFW.

GEAR TYPES OTHER THAN FLOATING FISH TRAPS – Forty percent (40%) of the Summer- Fall period quota will be allocated to all gear types except floating fish traps. The quota allocated to the other gear type sector will be available during the following sub-periods.
MAY - JUNE: One-third (1/3) of the other gear type quota will be available from May 1 through June 30. The possession limit per vessel on May 1 will be 1,000 pounds per calendar day. The possession limit will be reduced at the discretion of the Division. The fishery will close once the entire period allocation is projected to be harvested.
JULY - SEPT. 15: One-third (1/3) of the other gear type quota will be available from July 1 through September 15. The possession limit per vessel will be 100 pounds per calendar day until the end of the sub-period or until the entire sub-period allocation is projected to be harvested, at which time the fishery will close.
SEPT. 16 – OCTOBER 31: One-third (1/3) of the other gear type quota will be available from September 16 through October 31. The possession limit per vessel will be 100 pounds per calendar day until the end of the sub-period or until the entire sub-period allocation is projected to be harvested, at which time the fishery will close. Annually, on October 15, or thereafter, the Division may increase the possession limit if they project the entire quota will not be harvested by the end of the sub-period. Any unused portion of a sub-period allocation will be divided between the two remaining period(s). The DFW will have the discretion of adjusting trip limits upwards or downwards as necessary.
7.11.2-3 Possession Limit Adjustments -- Except for scup harvested from floating fish traps licensed by the State of Rhode Island, the possession limit may vary from 0 - 10,000 pounds. Fish and Wildlife, after discussions with fishing industry representatives, will determine, based upon the period of time remaining in the quota period and the current catch rate, whether the quota will be reached prior to the end of the sub-period. Having determined the catch rate and time remaining in the sub-period, Fish and Wildlife will decide whether the possession limit should be decreased or increased. Fish and Wildlife will file a notice with the Secretary of State's Office if the rate is changed and publish a news release announcing the change. The rate may be modified by Fish and Wildlife upon providing such notification with the possession limit altered between a range of 0 - 10,000 pounds in possession.

[Effective July 9, 2005 at 12:01 AM the possession limit for gear types other than floating fish traps for the commercial scup fishery will be 500 pounds per vessel per calendar day until the next sub period begins on September 16, 2005 with a possession limit of 100 pounds per vessel per calendar day.]

7.11.3 Scup - Reporting Requirement -- For the purpose of determining the commercial landings of scup in Rhode Island and whether the landings are increasing or decreasing during any period, every person licensed to catch, possess, purchase, or sell scup shall report weekly by telephone a record of the pounds of scup taken, possessed, purchased, or sold in Rhode Island during the period for which such record is requested; provided, however, such returns from any person or firm shall not be made public, shall be kept only in the files of said Division and be used only for statistical and fisheries management purposes.

7.11.4 Scup - Recreational

7.11.4-1 - No person fishing recreationally shall possess scup less than ten and one half inches (10.5") total length, and no person fishing recreationally shall possess, per calendar day, more than twenty-five (25) scup, whether caught within the jurisdiction of this State or otherwise except as provided in section 7.11.4-3. Compliance with the possession limit aboard vessels will be determined by dividing the number of fish on board a vessel by the number of fishermen on board said vessel.

7.11.4-2 – The recreational season for scup in Rhode Island waters will be open from July 1 through October 31 annually.

7.11.4-3 – While fishing on a party or charter boat, no person shall possess scup less than ten and one half inches (10.5") total length, and no person fishing while on a party or charter boat shall possess, per calendar day, whether caught within the jurisdiction of this State or otherwise, more than twenty five (25) scup from July 1 through August 31, and more than sixty (60) scup from September 1 through October 31. Compliance with the possession limit aboard vessels will be determined by dividing the number of fish on board a vessel by the number of fishermen on board said vessel.

7.11.5 Scup - Scup Dealer/Shipping/Transfer/Reporting Regulations

7.11.5-1 Prohibition on the transfer of Scup -- No Scup, *Stenotomus chrysops,* may be purchased, bartered, or sold within the State of Rhode Island unless in compliance with the following:

A. All persons are prohibited from transferring or attempting to transfer scup from one vessel to another vessel while at sea. The licensed person in charge of the vessel may only transfer scup to a dealer licensed by the State of Rhode Island. Dealers are

required to be licensed by the R.I. Department of Environmental Management (in compliance with RIGL 20-2-27 (d), or 20-2-28.1).

B. All scup must be weighed prior to the removal of the scup from the dealer's premises or from the point of transfer.

C. The weight scales must be certified in accordance with RIGL, Chapter 47-1.

D. Vessels are only allowed one trip limit in possession per calendar day. In addition, no person may land more than one trip limit in any calendar day. No person shall transport into the State of Rhode Island any scup which is not landed at a port located within the state unless the transaction of the first point of sale is in another state.

E. All dealers are required to record and report all transfers of scup in accordance with the following:

(1) Dealers shall maintain a written record on forms provided by the DFW, or dealer forms, of each scup transaction at their permanent place of business in Rhode Island, or with an authorized agent located in Rhode Island for inspection 8:00 AM - 4:00 PM during the course of normal daily business operations. Records must be available by 10:00 AM on the next business day following the date of landing. Records must be available at the dealer's or agent's Rhode Island office for a period of three years.

(2) The record must include: date of purchase, time of offloading, location of purchase, the vessel name, the name and license number of the Rhode Island license holder and the amount of scup transferred.

F. The total weekly purchases in pounds of scup must be reported by phone to the R.I. DEM Division of Fish and Wildlife marine office at 3 Ft. Wetherill Rd., Jamestown, Rhode Island 02832 (1-800-839-1346) by Tuesday of the following week.

<u>7.11.5-2</u> <u>License Suspension</u>

A. In addition to the penalty prescribed in RIGL 20-1-16, the license of any person who refuses or neglects to make the report required herein will be suspended by the Director. The license of any person who knowingly or willfully makes a false report or violates any provision of these regulations may be suspended for a period not to

exceed one year.

B. The Director has determined that non-compliance with these regulations seriously threatens the proper management of the available stock of scup and thus the general welfare as represented that it is appropriate to suspend the license of alleged violators pending formal suspension or revocation hearing arising from the alleged violation.

C. No person shall take, sell, or possess within this state any scup which have not been taken in compliance with the provisions of this regulation. Any scup which the Director shall have reasonable cause to believe have not been taken in compliance with the provisions of RIGL Title 20 and the regulations adopted in accordance therewith shall be confiscated and sold by the Department of Environmental Management.

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

7.12 Size, Possession, and Daily Limit Violations On Board Vessels -- 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)]

7.13 Atlantic Sturgeon - Moratorium on Harvest -- No harvest or possession of Atlantic Sturgeon will be permitted within the territorial waters of the State of Rhode Island until further notice. (RIMFC REGULATION) [Penalty - Part 3.3(RIGL 20-3-3) (RIGL 20-6-29)]

7.14 Black Sea Bass

7.14.1 Commercial Harvest

7.14.1-1 Legal Minimum Size -- No person fishing commercially shall take, possess, sell, possess for sale, or offer for sale any black sea bass measuring less than eleven (11) inches total length whether caught within the jurisdiction of this State or otherwise.

7.14.1-2 Commercial Seasons and Possession Limits -- A state quota for black sea bass will be established annually and shall be the most recent amount allocated to the State of Rhode Island by the Atlantic States Marine Fisheries Commission and/or the Secretary of the U.S. Department of Commerce as published in the Federal Register. The quota shall be available during the following seasons:

(a) January 1 – April 30: Twenty-five percent (25%) of the quota established in this part shall be available from January 1 through April 30, unless modified pursuant to section 7.14.1-2(e). It shall be unlawful to possess aboard or land from a vessel, in any one calendar day, more than 1,500 pounds of black sea bass during this period. When 60% of the sub-period allocation has been harvested, the possession limit will drop to 1,000 pounds. Refer to section 7.14.1-3 for current possession limit.

(b) May 1 – July 31: Twenty-five percent (25%) of the quota established in this part shall be available from May 1 through July 31, unless modified pursuant to section 7.14.1-2(e). It shall be unlawful to possess aboard or land from a vessel, in any one calendar day, more than 100 pounds of black sea bass during this period. Refer to section 7.14.1-3 for the current possession limit.

(c) August 1 – October 31: Twenty-five percent (39%) of the quota established in this part shall be available from August 1 through October 31, unless modified pursuant to section 7.14.1-2(e). It shall be unlawful to possess aboard or land from a vessel, in any one calendar day, more than 100 pounds of black sea bass during this period. Refer to section 7.14.1-3 for the current possession limit.

(d) November 1 – December 31: Twenty-five percent (11%) of the quota established in this part shall be available from November 1 through December 31, unless modified pursuant to section 7.14.1-2(e). It shall be unlawful to possess aboard or land from a vessel, in any one calendar day, more than 500 pounds of black sea bass during this period. Refer to section 7.14.1-3 for the current possession limit.

(e) Any unused portion of the quota from a 'sub-period' will be equally distributed to the allocations of the remaining sub-periods. The over-harvest of a sub-period allocation will be deducted from the allocations of the remaining sub-periods. Annually, the quota allocations specified in section 7.14.1-2(a-d) shall be adjusted by the DFW to charge over-harvest of a sub-period allocation during a given year to the same sub-period of the following year.

<u>7.14.1-3</u> <u>Current Commercial Possession Limit</u> –
Unless otherwise specified in this section, refer to 7.14.1-2 (a-e) for current commerical possession limit.

[Effective August 13, 2005 at 12:01 AM the possession limit for the commercial black sea bass fishery will be 300 pounds per

vessel per calendar day until the next sub period begins on November 1, 2005 with a possession limit of 500 pounds per vessel per calendar day.]

7.14.1-4 Possession Limit Adjustments – The possession limits specified according to section 7.14.1-2 may be modified by the Division of Fish and Wildlife, who, after discussions with fishing industry representatives, will determine, based upon the period of time remaining in the quota period and the current catch rate, whether the quota will be reached prior to the end of the sub-period. Having determined the catch rate and time remaining in the sub-period, Fish and Wildlife will decide whether the possession limit should be decreased or increased. Fish and Wildlife will file a notice with the Secretary of State's Office if the possession limit is changed and publish a news release announcing the change. Fish and Wildlife may modify the possession limit upon providing such notification.

7.14.1- 5 Reporting Requirement -- For the purpose of determining the commercial landings of black sea bass in Rhode Island and whether the landings are increasing or decreasing during any period, every person licensed to catch, possess, purchase, or sell black sea bass shall report weekly by telephone a record of the pounds of black sea bass taken, possessed, purchased, or sold in Rhode Island during the period for which such record is requested; provided, however, such returns from any person or firm shall not be made public, shall be kept only in the files of said Division, and be used only for statistical and fisheries management purposes.

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

7.14.2 Recreational Harvest

7.14.2-1 – Legal Minimum Size -- No person fishing recreationally shall possess a black sea bass less than twelve inches (12") total length, and no person fishing recreationally shall possess, per calendar day, more than twenty-five (25) black sea bass whether caught within the jurisdiction of this State or otherwise. Compliance with the possession limit aboard vessels will be determined by dividing the number of fish on a vessel by the number of recreational fishermen onboard said vessel.

7.14.2-2 – Recreational Season -- The recreational season for black sea bass in Rhode Island waters is open from January 1 through December 31, annually.

7.15 Spiny dogfish

7.15.1 Commercial Season and Possession Limits – The commercial season shall extend from May 1 until April 30 of the following year and shall be divided into two semi annual periods. It shall be unlawful to possess aboard or land from a vessel, in any one calendar day, more than 600 pounds of spiny dogfish during the period May 1 through October 31 and 300 pounds of spiny dogfish during the period November 1 through April 30. When notified that the quota in any given period has been harvested, as determined by the National Marine Fisheries Service or the Atlantic States Marine Fisheries Commission, the Division of Fish and Wildlife shall file a notice with the Office of the Secretary of State prohibiting the commercial landings, harvest and possession of spiny dogfish in state waters for the remainder of the designated period and publish a news release announcing the closure in a newspaper of daily circulation throughout the State.

7.15.2 Current Commercial Possession Limit – Effective May 1, 2004 at 12:01 AM the commercial landings and possession limits of spiny dogfish will follow the regulations as set out in section 7.15.

7.15.3 Prohibition of Finning – Finning is defined as the act of taking a spiny dogfish, removing the fins, and returning the remainder of the spiny dogfish to the sea. Finning spiny dogfish shall be prohibited in all state waters. Vessels that land spiny dogfish must land fins in proportion to carcasses, with a maximum 5% fin to carcass ratio, by weight. Fins may be removed at sea, but the corresponding carcass must be retained. All fins and carcasses must be landed at the same time and in the same location. RIMF REGULATIONS [Penalty – Part 3.3 (RIGL 30-3-3)

7.16 American Eel – No person shall take, attempt to take, possess, sell, or offer for sale any American Eel measuring less than six inches (6”). No person shall possess more than fifty (50) American eel per day unless commercially licensed pursuant to RIGL 20-2-26, 20-2-27, 20-2-28, 20-2-28.1. RIMFC REGULATIONS [Penalty – Part 3.3 (RIGL 30-3-3)

7.17 American Shad – The commercial harvesting, landing, or possession of American Shad (*Alosa sapidissima*) within the State of Rhode Island and its territorial waters is prohibited. RIMF REGULATIONS [Penalty – Part 3.3 (RIGL 30-3-3)

7.18 Weakfish

7.18.1 – Commercial

7.18.1-1 Minimum size -- No person fishing commercially shall take, possess, sell, possess for sale, or offer for sale any weakfish

measuring less than sixteen inches (16") total length whether caught within the jurisdiction of this State or otherwise.

7.18.1-2 **Season and Possession Limits – During the period June 1 through June 30 and the period August 7 through November 8, the commercial possession limit for weakfish shall be unlimited. At all other times it shall be unlawful to possess aboard or land from a vessel more than 300 pounds of weakfish in any one calendar day and it shall also be unlawful to possess aboard or land from a vessel any amount of weakfish where there is not at least an equal poundage of other species on board the vessel.**

7.18.2 Recreational

7.18.2-1 **Minimum Size -- No person fishing recreationally shall possess a weakfish less than sixteen inches (16") total length.**

7.18.2-2 **Season and Possession Limits – The recreational season for weakfish in Rhode Island waters is open January 1 through December 31, annually. No person fishing recreationally shall possess, per calendar day, more than ten (10) fish whether caught within the jurisdiction of this state or otherwise. Compliance with the possession limit aboard vessels will be determined by dividing the number of fish on a vessel by the number of recreational fishermen onboard said vessel.**

RIMF REGULATIONS [Penalty – Part 3.3 (RIGL 30-3-3)

7.19 Atlantic Herring (*Clupea harengus*)

7.19.1 Commercial

7.19.1-1 **Season and Possession Limits – The season for Atlantic herring begins annually on January 1. The possession limit is unlimited unless otherwise indicated in this section. When the Atlantic Herring quota has been harvested as determined by the National Marine Fisheries Service (NMFS), the season will close.**

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 August 2005 to become effective 20 days from filing, unless **otherwise indicated below**, in accordance with the provisions of 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 42-35 the General Laws of Rhode Island of 1956, as amended.

_____

Michael Lapisky
Acting Chief

Notice Given: 04/19/2005
Public Hearing: 05/19/2005

Filing date: 08/12/2005
Effective date: 08/12/2005