



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 XVIII Shellfish Grounds



Annotated 12/13/2012 - Final
(Section 18.6, 18.10; Pages 5 & 6)

December 31, 2001 December 17, 2012

AUTHORITY: These regulations are adopted pursuant to **Title 20**, Chapters 42-17.1, 42-17.6, **and 42-17.7, 20-1-2, 20-1-4, 20-3-2 thru 20-3-6, 20-4 thru 20-10,** and in accordance with **Chapter 42-35, Administrative Procedures Act** of the Rhode Island General Laws of 1956, as amended.

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TABLE OF CONTENTS

RULE #1 PURPOSE.....	iii
RULE #2 AUTHORITY	iii
RULE #3 ADMINISTRATIVE FINDINGS	iii
RULE #4 APPLICATION	iii
RULE #5 REGULATIONS	Part XVIII, p 4 <u>4-7</u>
RULE #6 SEVERABILITY.....	iii
RULE #7 SUPERSEDED RULES AND REGULATIONS	iii
RULE #8 EFFECTIVE DATE PAGE.....	iv <u>8</u>

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PURPOSE

The purpose of these rules and regulations is to supplement and simplify and/or clarify existing regulations in order to more efficiently manage the marine resources of Rhode Island.

AUTHORITY

These rules and regulations are promulgated pursuant to Title 20, Chapters 42-17.1, 42-17.6, and 42-17.7, 20-1-2, 20-1-4, 20-3-2 thru 20-3-6, 20-4 thru 20-10, and in accordance with Chapter 42-35, Administrative Procedures Act, of the Rhode Island General Laws of 1956, as amended.

ADMINISTRATIVE FINDINGS

Rules and regulations are based upon the need to modify existing regulations in accordance with Chapter 42-35, Administrative Procedures Act of the Rhode Island General Laws of 1956, as amended. (~~RIGL 20-3-2 through 20-3-6~~).

APPLICATION

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

DEFINITIONS

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

SEVERABILITY

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

SUPERSEDED RULES AND REGULATIONS

On the effective date of these rules and regulations, all previous rules and regulations, and any policies regarding the administration and enforcement of Part XVIII 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.

R.I. Marine Fisheries Statutes and Regulations
PART XVIII - SHELLFISH GROUNDS

18.1 Definitions -- Unless otherwise specifically provided in this chapter, the following definitions shall apply to this chapter:

- (1) "Approved" means approved by the director;
- (2) "Conditionally approved water" means and includes any shellfish grounds underlying waters examined and found fit for the taking of shellfish for human consumption on an intermittent basis, declared by the director as conditionally approved waters pursuant to §§ 20-8.1-3 and 20-8.1-4;
- (3) "Department" means the state department of environmental management;
- (4) "Director" means the director of the state department of environmental management or his or her duly appointed agents;
- (5) "Person" means any individual, firm, co-partnership, association, or private or municipal corporation;
- (6)(i) "Polluted area" means and includes any shellfish grounds underlying waters examined and found to be unfit for the taking of shellfish for human consumption declared by the director as polluted areas pursuant to §§ 20-8.1-3 and 20-8.1-4;
- (ii) For the purposes of any criminal or civil proceeding instituted under this chapter, a declaration by the director shall be prima facie evidence of a polluted area;
- (7) "Shellfish" means and includes oysters, mussels, and all varieties of clams;
- (8) "Shellfish grounds" means and includes all land underlying waters within the rise and fall of the tide and the marine limits of the jurisdiction of the state; and
- (9) "Taking" means and includes the gathering, digging, raking, tonging, or dredging of shellfish.

(RIGL 20-8.1-1)

18.2 Regulations -- The director shall, with the approval of the environmental standards board established under § 42-17.3-1 [deleted], adopt any regulations regarding shellfish grounds that he or she deems necessary with reference to the growing and taking of shellfish. (RIGL 20-8.1-2)

18.3 Investigation of shellfish grounds - Notice of polluted areas -- The director shall investigate the sanitary condition of the waters overlying shellfish grounds. Those waters that are found to be in an unsatisfactory sanitary condition for the taking of shellfish for human consumption shall be declared to be polluted areas. The director shall give annual notice as to those areas of the waters of the state that he or she has declared to be polluted by advertising this action in at least one public newspaper published in the city of Providence. The director shall provide notice with each shellfish license issued or reissued after December 31, 1994, that it is the obligation of each licensee to inquire by calling a dedicated telephone line or dedicated teletext phone for persons who are

deaf, hard of hearing, or speech impaired (TTY) line maintained by the department of environmental management prior to taking any shellfish in the waters of the state that are conditionally approved waters. The director shall arrange for notice to be provided on the telephone and TTY telephone lines as to those conditionally approved waters of the state which the director declares to be polluted and in which no shellfish may be taken. (RIGL 20-8.1-3)

18.4 Factors considered in determining polluted areas -- In making a determination that an area is polluted, the director shall take into consideration one or more of the following matters as they apply: the volume of sewage that may affect the area; the dilution of that sewage by clean water; the distance of the area from sources of pollution; the "most probable number" of fecal coliform bacteria found upon examining the water from the area in accordance with the national shellfish sanitation programs manual of operations exceeds 14 per one hundred milliliters (100 ml) of water, for a 3-tube decimal dilution test or exceeds 49 per 100 ml of water for a 3-tube decimal dilution test for more than ten (10) percent of the samples. The director may declare an area to be polluted in the absence of a "most probable number" of fecal coliform if the director has evidence that significant volumes of raw sewage or inadequately purified sewage may reach the area. A review of the status of all the area in the state shall be made by the director on at least an annual basis. (RIGL 20-8.1-4)

18.5 Taking or selling of shellfish from polluted areas -- No person shall take shellfish from the waters of polluted areas, or knowingly sell shellfish taken from the waters of polluted areas, except pursuant to a transplant program specifically authorized by and conducted under the direct supervision of the director. In granting permission, the department of environmental management shall first obtain the written approval of the director of the department of health as to the suitability and safety for the purposes intended. The possession by any person of shellfish while in a vessel upon the waters of polluted areas between the hours of two (2) hours after sunset and sunrise shall be prima facie evidence that those shellfish were taken by that person in violation of this section (RIGL 20-8.1-5)

18.6 Use of ~~dredges, tongs, and rakes~~ devices capable of harvesting shellfish in polluted areas -- No person shall work a dredge, pair of tongs, rake or rakes, air-assisted equipment, water-assisted equipment, or any other implement ~~commonly capable of harvesting employed in taking~~ shellfish, except an implement commonly employed for the taking of bay scallops, (within established bay scallop seasons), in a polluted area, ~~nor shall any~~ **No** person, while upon or sailing over any polluted area, shall cast, haul, or have overboard, any dredge, pair of tongs, rake or rakes, air-assisted equipment, water-assisted equipment, or any other implement capable of harvesting shellfish, except an implement commonly employed for the taking of bay scallops (within established bay scallop seasons), ~~dredge, pair of tongs, rake or rakes, or any other implement commonly employed in the taking shellfish except an implement commonly employed for the taking of scallops.~~ (RIGL 20-8.1-6) Penalty (RIGL 20-8.1-11)

18.7 Taking, sale of, or possession of non-complying shellfish prohibited - Confiscation - Search warrants -- No person shall take, sell, or possess, within this state, any shellfish which have not been taken in compliance with the provisions of this chapter and the regulations adopted in accordance with this chapter. Any shellfish which the director has reasonable cause to believe have been taken from polluted areas, or which have not been taken in compliance with the provisions of this chapter and the regulations adopted in accordance with this chapter shall be confiscated. Search warrants may be issued by any district court upon the complaint of the director or the director's duly authorized agents relating to violations of this chapter. (RIGL 20-8.1-7) [Penalty (RIGL 20-8.1-11)]

18.8 Enforcement - Prosecution of violations -- It shall be the duty of the director to enforce the provisions of this chapter and the regulations adopted in accordance with this chapter and to prosecute all persons guilty of violations of these regulations. In all prosecutions the director shall not be required to enter into any recognizance nor to give surety for costs. (RIGL 20-8.1-8)

18.9 Inspection of boats, vessels, and vehicles -- The director shall make regular inspections of the boats, vessels, and vehicles used or suggested of being used in the taking or transporting of shellfish, and no person shall interfere with or obstruct the entrance of the director to any boat, vessel, or vehicle, for the purpose of making inspections, and no person shall obstruct the conduct of any inspections; provided, however, that inspections as to the taking of shellfish shall be made only by the director or employees of the state department of environmental management. (RIGL 20-8.1-9)

18.10 Powers of enforcement -- ~~Conservation~~ **Environmental Police** officers of the department may arrest any person found violating any of the provisions of this chapter, and may seize all shellfish and any boat or vessel, or outboard motor, or dredge, tongs, rakes, or other implements, commonly employed in the taking of shellfish, in possession of any person violating the provisions of this chapter, and may make complaints for all those violations, and in any complaint they shall not be required at the time of complaint or thereafter to enter into recognizance or in any way to become liable for the costs that may accrue. (RIGL 20-8.1-10)

18.11 Penalties for Violations -- Persons convicted of violating any of the provisions of this chapter or the regulations adopted in accordance with this chapter shall be punished by a term of imprisonment not exceeding one (1) year or by a fine not exceeding five hundred dollars (\$500), or both, for the first offense; and by a term of imprisonment not exceeding four (4) years or by a fine not exceeding two thousand dollars (\$2,000), by both, for a subsequent offense. Any boat or vessel, or outboard motor, or dredge, tongs, rakes, or other implements commonly employed in the taking of shellfish, seized from any person as used in violation of §§ 20-8.1-5 and/or 20-8.1-6, shall upon conviction of that person be forfeited to the state. That forfeiture shall follow the course provided in chapter 21 of Title 12 as amended and § 20-1-8.1. (RIGL 20-8.1-11)

18.12 Procedures for Seizure and Forfeiture –

(a) Any vessel, boat, fishing tackle, guns, shooting and hunting paraphernalia, traps, decoys, or any other implements, appliances, or equipment used in violation of any law, rule, or regulation relating to fish and wildlife, which, by provision of any section of this title, is subject to forfeiture to the state, shall be seized pursuant to § 20-1-8(a) and forfeited under the provisions of this section.

(b) The attorney general shall proceed pursuant to §§ 12-21-23 -- 12-21-32, to show cause why such vessel, boat, fishing tackle, guns, shooting and hunting paraphernalia, traps, decoys, or any other implements, appliances, or equipment used in the knowing and willful violation of any laws, rules, or regulation relating to fish and wildlife which, by provision of any section of this title, is subject to forfeiture to the state, may be forfeited to the use of or the sale of the department on producing due proof that the vessel, fishing tackle, guns, shooting and hunting paraphernalia, traps, decoys, or any other implements, appliances, or equipment was used in such violation.

(c) Whenever property is forfeited under this section and the specific provision of this title requiring forfeiture for a particular offense, the department may:

- (1) Retain the property for official use; or
- (2) Sell any forfeited property which is not required by this title to be destroyed and which is not harmful to the public; but the proceeds of this sale, after first deducting the amount sufficient for all proper expenses of the proceedings for forfeiture and sale, including expenses of seizure, maintenance of custody, and advertising and court costs, shall be paid to the general treasurer for the use of the state.

(RIGL 20-1-8.1)

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 17th day of December, 2012 to become effective 20 days from filing, unless otherwise indicated, in accordance with the provisions of Title 20, Chapters ~~20-1-2, 20-1-4, 20-3-2 through 20-3-6, 20-4 through 20-10, 42-35,~~ 42-17.1, 42-17.6 and 42-17.7, and in accordance with Chapter 42-35, Administrative Procedures Act of the Rhode Island of the General Laws of Rhode Island of 1956, as amended.

Jan Harmen Reitsma, Janet L. Coit, Director
Department of Environmental Management

Notice Given: ~~REFILE 11/29/01~~ 03/02/2012

Public Hearing: ~~None requested~~ 04/03/2012

Filing date: ~~12/31/2001~~ 12/17/2012

Effective date: ~~the date they are stamped received by the Secretary of State's Office~~ 01/06/2013

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