

Final annotations

Public Hearing – June 12, 2017

Part 7 - Dealers

Filed August 9, 2017

DEFINITIONS

See Rhode Island Marine Fisheries Regulations, ~~“Part I—Definitions”~~ Part I of this Subchapter .

REGULATIONS

7.1 License required:

~~7.1.1 No person shall sell, purchase, barter, or trade marine fisheries species in Rhode Island unless properly licensed, as specified in RI Marine Fisheries regulations (RIMFR) “Commercial and Recreational Saltwater Fishing Licensing Regulations”, or is exempt from such licensing requirements as authorized by the Director.~~

~~7.1.2 Each licensed shellfish dealer must have a DOH shellfish license pursuant to RIGL Chapter 21-14.~~

7.21 Dealer Reporting:

7.21.1 Dealers shall accurately identify all marine species received as categorized in the Standard Atlantic Fisheries Information System (SAFIS) system;

7.21.2 Dealers shall ~~weigh~~ **have accounted for the quantity by count, weight and/or volume of** all marine species ~~landed at~~ **landed at** ~~prior to their removal from the dealer's premises or from~~ the point of transfer **from the harvester**;

7.21.3 Dealer weight scales must be certified in accordance with Rhode Island law RIGL, Chapter 47-1;

7.1.4 Dealers shall maintain a record of transaction for all sales of marine species. The following information shall be maintained at the dealer's place of business and be available for inspection by the Director:

(A) Sellers' name;

(B) Seller's commercial fishing license number;

(C) Date of purchase;

(D) Species landed;

(E) Quantity of purchase;

(F) Signature of seller. This provision shall not take effect until May 1, 2018.

7.2.41.5 Dealers shall submit an electronic report to the SAFIS. In cases where a seafood dealer falls under the jurisdiction of both the state of RI and the federal government (NMFS), ~~said the~~ dealer must comply with the more frequent of the minimum reporting schedules or the more detailed trip level data requirement.

7.2.51.6 Reporting frequency and required trip level data elements:

(A) Weekly reporting: Trip level data for all species ~~harvested~~ landed shall be reported each week on Mondays and Thursdays, are due no more than five days after the date of purchase, and shall consist of the following ~~elements~~:

- (1) The species common name including market level and grade;
- (2) The amount landed or purchased including the units the product was measured in (i.e. pounds);
- (3) The area where product was taken (only applicable to shellfish purchases);
- (4) The date the product was landed or purchased;
- (5) The RI Commercial license or landing permit number of the fisherman selling the product to the dealer;
- (6) The vessel identification number (Coast Guard documentation number and/or state of RI registration number);
- (7) The port or location where the catch was landed or purchased; and
- (8) When a seafood dealer is purchasing research set aside from a permitted and properly licensed fisherman, the poundage purchased will be designated in the catch source field as "RSA".

(B) Price reporting: ~~Trip-Level~~ Price data for all species harvested shall be reported within thirty (30) days of the landing or purchase date ~~and consist of the price at which the product was purchased and the disposition.~~

~~7.2.3~~(C) Negative reports:

(A1) RI licensed seafood dealers shall submit a negative report to SAFIS for each weekly reporting period during which no seafood product was landed or purchased;

(B2) Dealers may file negative reports for a maximum of three (3) months in advance.

7.-2.41.7 Control Date: The date for compliance with this section is March 1, 2006.

7.32 Shellfish dealers:

7.3.12.1 Licensed Shellfish dealers may only purchase, barter, or trade in wild or cultured shellfish that have been:

(A) Harvested from or cultured in Rhode Island waters from licensed shellfishermen, licensed aquaculturists, or other ~~licensed~~ shellfish dealers; or

(B) ~~Taken~~ Harvested from ~~other than~~ waters outside of Rhode Island ~~waters~~ from a dealer whose shellfish business appears on the US ~~Public Health Service,~~ Food and Drug Administration ~~list of certified shippers~~ Interstate Certified Shellfish Shippers List (ICSSL), and tagged in accordance with the National Shellfish Sanitation Program (NSSP) Model Ordinance and Rhode Island DOH regulations “Rules and Regulations Pertaining to the Processing and Distribution of Shellfish”, which are incorporated herein by reference.

7.3.22.2 Licensed Shellfish dealers may not purchase or accept any wild or cultured shellfish from a shellfisherman or aquaculturist without first being presented with a valid ~~shellfish or multipurpose~~ commercial fishing license issued by DEM ~~to said shellfisherman or aquaculturist.~~

7.3.32.3 ~~Each licensed~~ Shellfish dealers s must also have possess a DOH shellfish business license pursuant to ~~RIGL Chapter 21-14~~ DOH “Rules and Regulations Pertaining to the Processing and Distribution of Shellfish”, which are incorporated herein by reference.

7.2.4 Shellfish dealers shall maintain a record of transaction for all sales of shellfish. The following information shall be maintained at the dealer’s place of business and be available for inspection by the Director:

(A) Sellers’ name;

(B) Seller’s commercial fishing license number;

(C) Seller’s date of birth

(D) Harvest tagging area where shellfish were harvested;

(E) Quantity of shellfish purchased;

(F) Species landed;

(G) Purchase price;

(H) Date and time of transaction;

(I) Signature of seller.

(J) Any shellfish possessed by a dealer that measures less than the State minimum size for wild stock must be properly identified as cultured product with appropriate tagging as required by the Director. For transactions of shellfish cultured on an aquaculture lease, Each the dealer shall maintain complete, accurate and legible records sufficient to: ~~(i)~~ document the source of shellfish; and ~~(ii)~~ permit the contents of the container of shellfish to be traced back to the aquaculture lease site and date of harvest. ~~In addition, All purchases and sales transactions shall be recorded in a permanently bound ledger book or other approved recording method authorized by DEM and DOH by a method approved by DEM and DOH.~~

7.3.52.5 Shellfish harvested from or cultured in Rhode Island waters may only be sold to out-of-state ~~buyers~~ dealers by ~~licensed~~ shellfish dealers whose businesses appear on the US ~~Public Health Service~~, Food and Drug Administration ~~list of certified shippers~~ Interstate Certified Shellfish Shippers List (ICSSL) and are licensed with DOH. Said dealers must also comply with all applicable DEM and DOH rules governing the handling, tagging and sale of shellfish, as well as all applicable state and federal rules governing the interstate shipment of shellfish.

7.3.62.6 Shellfish harvested from or cultured in other than Rhode Island waters may only be sold to ~~buyers~~ dealers in or from Rhode Island by out-of-state ~~sellers~~ dealers whose businesses appear on the US ~~Public Health Service~~, Food and Drug Administration ~~list of certified shippers~~ Interstate Certified Shellfish Shippers List (ICSSL); and said transactions must comply with all applicable state and federal rules governing the interstate shipment of shellfish.

~~7.3.7 Licensed Shellfish dealers may not purchase or accept any shellfish from shellfishermen or aquaculturists unless such shellfish are bagged and tagged in accordance with RIMFR "Part 4 – Shellfish" and/or "Aquaculture of Marine Species in RI Waters".~~

7.3.82.7 Undersize shellfish provisions: ~~(A)~~ A dealer may possess undersize cultured shellfish crops, excluding bay quahaugs (*Mercenaria mercenaria*), provided the dealer has obtained said cultured crops from an licensed aquaculturist or dealer.

~~(B) Any shellfish possessed by a dealer that measures less than the State minimum size for wild stock must be properly identified as cultured product with appropriate tagging as required by the Director. Each dealer shall maintain~~

~~complete, accurate and legible records sufficient to: (i) document the source of shellfish, and (ii) permit the contents of the container of shellfish to be traced back to the aquaculture lease site and date of harvest. In addition, all purchases and sales shall be recorded in a permanently bound ledger book or other approved recording method authorized by DEM and DOH.~~

~~(C) Cultured shellfish crops shall not be commingled with any wild stock shellfish or other cultured shellfish crops from a different harvest date or location.~~

7.3.92.8 Wet storage of shellfish:

(A) No person shall engage in **land-based** wet storage **(as defined in the NSSP 2015 Model Ordinance)** of molluscan shellfish without ~~first obtaining a dealer's license~~ **prior written authorization** from DOH. ~~The shellfish dealer shall submit an operational plan specifying how the wet storage of molluscan shellfish will be carried out conducted. Such an operational plan is subject to approval by DOH and DEM prior to approval of the wet storage facility~~ **Open-water wet storage (as defined in the NSSP Model Ordinance) is prohibited.**

~~(B) The DEM Director shall determine the compatibility of any wet storage facility with the resources in surrounding areas and shall be satisfied that every practical precaution is in place to prevent the spread of shellfish disease and pathogens. The DEM Director shall have the authority to limit or restrict the wet storage and transplant activities in areas within waterways that are considered to be at risk for the transmission of shellfish diseases, or grant an exception if justified, after careful consideration of disease monitoring studies.~~

~~(C) For purposes of open water wet storage, the licensed dealer shall apply to the CRMC for an assent for an initial wet storage site or modification to an existing aquaculture facility or lease. A CRMC assent shall be required for a wet storage facility located within the CRMC's jurisdiction, as specified in CRMC Management Procedures, Section 4-1.~~

~~(D) If the open water wet storage is conducted as part of an aquaculture operation, the licensed dealer shall apply to DEM for a DEM Aquaculture Permit; if the permit is issued, it should appropriately address the possession of shellfish held for wet storage.~~

~~(E) Molluscan shellfish to be wet-stored must be harvested from or cultured in approved shellfish growing areas or conditionally approved areas when open.~~

~~(F) All facility designs, structures and methods used for wet storage of molluscan shellfish must be approved by DOH pursuant to the National Shellfish Sanitation Program (NSSP) standards. The CRMC shall determine the structural suitability of any apparatus used for in-water storage of molluscan shellfish.~~

~~(G) The CRMC shall be responsible for the approval of the location of all open water storage facilities. When a wet storage facility is operated in conjunction with~~

~~an aquaculture operation, the wet stored products shall be maintained separately from the cultured products designated by CRMC and the approved Operational Plan.~~

~~(H) Containers used in wet storage of molluscan shellfish shall be approved by DOH and shall be marked appropriately (indicating that they contain the source of the either wet stored wild or cultured stock).~~

~~(I) The shellfish dealer shall maintain accurate and complete records of all wet storage activities including, but not limited to, the source of the molluscan shellfish, the amounts stored, and the times/dates of storage/disposition of the molluscan shellfish. Such records shall be maintained for a minimum of two years and shall be available for inspection by DOH and DEM upon request.~~

~~(K) Permitted, open water wet storage facilities shall only store wild or cultured molluscan shellfish that have been harvested from or cultured in the same waterway in which the wet storage facility is located. In all other cases, shellfish must be wet stored in an approved closed tank system.~~

~~(L) A permitted wet storage facility shall only store legal-sized molluscan shellfish.~~

~~(M) Each wet storage facility shall be evaluated and approved annually by DOH. Since water quality and water quality classification of waters within the state are subject to change due to environmental conditions, shellfish dealers conducting wet storage of molluscan shellfish shall be required to respond to these changes. Wet storage of shellfish in waters other than those in the approved classification or in the open status of the conditional approved classification is prohibited. The CRMC, DEM and DOH shall not assume any liability for any environmental changes nor liability for potential damages incurred by shellfish dealers.~~

7.3.102.9 Dealer handling of Shellfish:

~~(A) Rhode Island licensed shellfish dealers are prohibited from mixing or commingling shellfish taken from Rhode Island waters with shellfish taken from other state's waters. **Dealer's shall comply with the NSSP Model Ordinance and DOH regulations "Rules and Regulations Pertaining to the Processing and Distribution of Shellfish", which are incorporated herein by reference.**~~

7.3.112.10 Dealer tagging of shellfish: Dealer's shall comply with the NSSP Model Ordinance and DOH regulations "Rules and Regulations Pertaining to the Processing and Distribution of Shellfish", which are incorporated herein by reference. Shellfish dealers shall properly tag each bag or container of shellfish as follows:

~~(A) The dealer shall keep the harvester's tag affixed to each container of shellfish until the container is (i) shipped, or (ii) emptied to wash, grade, or pack the shellfish.~~

~~(B) The dealer shall affix his/her dealer's tag to each container of shellfish prior to shipment, and immediately after shellfish emptied from a tagged container have been washed, graded, or packed.~~

~~(C) When the dealer is also a licensed aquaculturist and he/she elects not to use a harvester's tag, he/she shall affix his/her dealer's tag to each container of shellfish prior to leaving the aquaculture site, removing the shellfish from a vessel, or offering the shellfish for sale.~~

~~(D) The dealer's tag shall be (i) durable, waterproof and sanctioned by DOH prior to use, and (ii) at least 2 5/8 inches by 5 1/4 inches (6.7 x 13.3 cm) in size.~~

~~(E) The dealer's tag shall contain the following indelible, legible information in the order specified below:~~

~~(1) Dealer's name and address;~~

~~(2) Dealer's certification number as assigned by DOH and the original shellfish shipper's certification number;~~

~~(3) The date of harvest;~~

~~(4) The most precise identification of the harvest location as is practicable including the initials of the state of harvest, and the DOH/DEM designation of the growing area by indexing, administrative or geographic designation;~~

~~(5) When the shellfish has been placed in wet storage in a dealer's operation, the statement: **"THIS PRODUCT IS A PRODUCT OF (NAME OF STATE) AND WAS WET STORED AT (FACILITY CERTIFICATION NUMBER) FROM (DATE) TO (DATE)";**~~

~~(6) The type and quantity of shellfish; and~~

~~(7) The following statement in bold capitalized type on each tag: **"THIS TAG IS REQUIRED TO BE ATTACHED UNTIL CONTAINER IS EMPTY OR IS RETAGGED AND THEREAFTER KEPT ON FILE FOR 90 DAYS".**~~

7.6 (A) Exemption for surf clams and/or ocean quahaugs for use as bait: ~~These rules~~ **Dealer tagging** ~~shall not apply to persons buying~~ **is not required for** surf clams or ocean quahaugs for use as bait and not for human consumption **however at a minimum must be labeled and/or designated as bait in a method approved by DEM and DOH.** ~~However, any other rule or law governing these species shall remain in effect and not be superseded by this exemption.~~

~~7.3.12 Shellfish purchased or acquired by a Rhode Island licensed shellfish dealer may be separately sorted by type, size, or other basis. The original containers with tags must be kept in close proximity while sorting, grading and processing is taking place.~~

~~7.3.13 Shell stock shall be washed reasonably free of bottom sediments as soon after harvesting as possible. The harvester shall be primarily responsible for washing shell stock. If shell stock washing is not feasible at the time of harvest, the dealer shall assume this responsibility. Water used for washing shall be from a potable water source, or growing area in the approved classification or open status of the conditionally approved classification.~~

7.2.11 Dealers shall comply with the NSSP Model Ordinance and DOH regulations “Rules and Regulations Pertaining to the Processing and Distribution of Shellfish”, which are incorporated herein by reference.

~~7.3.4 Any person engaged solely in the business of selling seafood, including shellfish (wild or cultured), to consumers, either directly or through restaurants or other retail outlets, and/or engaged solely in the processing or preparation of seafood, including shellfish (wild or cultured), for sale directly to consumers, is not required to be licensed under these regulations, provided that such person purchases or otherwise acquires said shellfish seafood from licensed a shellfish dealers.~~

7.4 Importation of non-indigenous (non-native) horseshoe crabs: No ~~licensed fish/shellfish~~ dealer shall import, attempt to import, or possess in the cooked or uncooked (frozen) state any non-indigenous (non-native) Horseshoe Crab species within the State of Rhode Island without prior, written authorization by the Department. The only species of Horseshoe Crab which may be possessed within the jurisdictional limits of the State of Rhode Island is the Atlantic Horseshoe Crab *Limulus polyphemus*.

7.5 Striped bass finning: No ~~licensed fish/shellfish~~ dealer may purchase and/or offer for sale, any striped bass where the entire right pectoral fin has been removed.

7.6 Striped bass tagging:

(A) Each individual Striped bass shall be immediately marked with tags available from DFW. No Striped bass may be sold unless it has been properly identified with such tag. DFW may designate tagging agents as appropriate. All designated tagging agents shall keep and maintain the required forms and reports specified by DFW. All tag reports and unused tags must be returned to DFW by January 1st of the following year. Failure to return reports and unused tags may result in the tagging agent becoming ineligible to receive striped bass tags in the future.

7.7 Summer flounder:

7.7.1 Dealers shall place Summer flounder in standard 60 or 100 pound cartons (containers) prior to their removal from the dealer's premises or from the point of transfer, unless specific prior written authorization is requested and received from

the Division of Law Enforcement;

7.7.2 Dealers shall receive Summer flounder between the hours of 6:00 AM to 8:00 PM only.

7.8 Lobster Exemption Certificate for Dealers:

(A) Dealers wishing to purchase, barter, trade or import lobsters from outside of the state or receive lobsters from LCMA 3 which are less than the minimum size for LCMA 2 must obtain a Lobster Exemption Certificate for Dealers from the Director. Eligibility requirements are as follows:

(1) The applicant dealer must hold a valid commercial dealers license to deal in lobsters in Rhode Island;

(2) The applicant dealer shall provide a copy of a valid dealer's license to purchase, barter, trade or import lobsters in the State of the Rhode Island;

(3) The applicant dealer must maintain a landside facility in Rhode Island with the tanks required to segregate and store separately lobsters not conforming to the LCMA 2 minimum size.

(B) Application shall be made on forms prescribed by the Director.

(C) Conditions to maintain compliance:

(1) The Certificate holder must notify the DLE by phone between one hour and six hours prior to receiving a shipment. The notification must include the name of the dealer receiving the shipment, the name of the dealer sending the shipment, the transfer time and location of transfer, and amount of lobster to be received, and if a vessel is involved the name of the vessel.

(2) All shipments of lobsters less than the LCMA 2 minimum size as must be culled out immediately and stored separately on the business premises of the Certificate holder.

(3) The Certificate holder shall maintain a written record of all transactions taking place under the provisions of this section including: the date of purchase; time of purchase; location of purchase; name of selling dealer or vessel; the person in charge of the vessel; amount of lobster received, including number of animals and total weight. Records shall be maintained documenting the sale of lobsters received pursuant to this section, including the date and time of sale, and the name of the person or dealer to whom the lobsters were sold. Records must be available for inspection 8:00AM – 4:00PM at the dealer's Rhode Island office or with an authorized business agent for a period of three (3) years from the date of the acquisition of the lobsters. Records shall be available for immediate inspection as a condition of this permit.

(4) Lobsters not conforming to the LCMA 2 minimum size may only be exported out of state or sold to another dealer who possesses a Lobster Exemption Certificate for Dealers for export out of state. No lobsters less than the LCMA 2 minimum size may be offered for sale on the retail market in Rhode Island.

~~7.8 Violations for non-compliance: If the DFW and/or the Chief of the Division of Law Enforcement determine that there has been non-compliance with the provisions of these regulations or a permit agreement, the owner and/or operator of the permitted vessel shall be advised of such determination and the specific grounds therefore in writing by delivery of same by certified mail or by personal service upon the owner or operator in compliance with the requirements set out in Rule 4 of the Rhode Island Superior Court Rules of Civil Procedure. The determination shall specifically include notice that an opportunity for an impartial hearing is available before the Administrative Adjudication Division pursuant to R.I. Gen. Laws Chapter 42-17.7 relative to either or both the finding that sufficient evidence exists of non-compliance with the provisions of these regulations or the permit agreement as well as the termination of the permit and or the imposition of a penalty pursuant to RIGL 20-1-16 as well as the ineligibility to reapply for a permit for the subject vessel for the remainder of the Summer sub-period.~~

~~7.9 Penalties:~~

~~7.9.1 Judicially imposed penalty for violations: Unless otherwise specifically provided, the violation of any law or rule or regulation relating to wild animals, wild birds, lobsters and fish, marine, freshwater and anadromous fisheries and shellfisheries shall be a misdemeanor, punishable by a fine of not more than five hundred dollars (\$500) or imprisonment for up to ninety (90) days, or both (RIGL §20-1-16)~~

~~7.9.2 Additionally, a person may be subject to the imposition of a administrative penalty pursuant to DEM's "Rules and Regulations Governing the Suspension/Revocation of Commercial Marine Fisheries, Shellfish Buyer, Lobster Dealer, Finfish Dealer, and Multi-purpose Dealer, licenses issued pursuant to Title 20 of RIGL "Fish and Wildlife".~~

~~7.10 Appeals:~~

~~7.10.1 Denial of a license or permit: Persons denied a license or permit may request an appeal as provided by RIGL Chapter 42-17.7 and pursuant to DEM's "Administrative Rules of Practice and Procedure for the Administrative Adjudication Division for Environmental Matters"~~

~~7.10.2 Enforcement Action: Any person affected by a decision of the Director for an enforcement action pursuant to these regulations may file and appeal in accordance with RIGL Chapter 42-17.7 and DEM's Administrative Rules of Practice and Procedure for the Administrative Adjudication Division for Environmental Matters.~~