

State of Rhode Island and Providence Plantations
DEPARTMENT OF ENVIRONMENTAL MANAGEMENT

PUBLIC NOTICE CONCERNING PROPOSED REGULATORY CHANGES

Pursuant to the provisions of Chapters 42-17.1 and 20-3 of the General Laws of Rhode Island as amended, and in accordance with the Administrative Procedures Act Chapter 42-35 of the General Laws, the Director of the Department of Environmental Management (DEM) proposes amendments to the Rhode Island Marine Fisheries Regulations and gives notice of intent to hold a public hearing to afford interested parties the opportunity for public comment.

Public comment will be solicited on the following proposals:

- 1) Summer flounder quota management proposals;
- 2) Proposal to continue/expand/modify summer flounder sector allocation program in 2010;
- 3) Proposal to amend the control date for the summer flounder commercial fishery;
- 4) Proposal to terminate the RI State summer flounder exemption certificate program;
- 5) Scup quota management proposals;
- 6) Black sea bass quota management proposals;
- 7) Proposed amendments to spiny dogfish management plan;
- 8) Proposed adoption of coastal sharks management plan; and
- 9) Proposed amendments to the bay scallops management program.

The public hearing will commence at 6:00 PM on **Thursday, November 12, 2009** in the University of Rhode Island Graduate School of Oceanography, Corless Auditorium, South Ferry Road, Narragansett, RI 02882. The hearing room is handicap accessible. A taped record of the hearing will be made and the DEM will provide interpreter services for the hearing impaired, provided such services are requested at least 48 hours prior to the hearing date. A request for this service can be made in writing or by calling (401) 222-6800 or TDD (401) 831-5508. Written comments concerning the regulations proposed for promulgation by the DEM may also be submitted to the Division of Fish and Wildlife, 3 Fort Wetherill Road, Jamestown, RI 02835 no later than 12:00 p.m. on November 12, 2009.

The Department has determined that small businesses may be adversely impacted by the proposed regulations. The public hearing is being conducted to solicit comment on the proposals and to allow public input from small businesses or any cities or towns, which may be adversely affected. Small businesses which are either currently licensed or in the future may seek permission to harvest, buy, sell, or produce seafood products as well as the small businesses that provide services related to those engaged in such industries and small businesses which buy, sell, or produce products or provide services related to fishing are requested to comment on the proposed regulations on how such proposed action can be changed to minimize the impact on those small businesses affected.

A copy of the proposed regulations will be available for examination from October 13 through November 12, 2009 by mail or at the offices of the Division of Fish and Wildlife located at 4808 Tower Hill Road, Wakefield, RI 02879 and at 3 Fort Wetherill Road, Jamestown, RI 02835. Electronic copies of the proposed regulations will also be available on the DEM website at the following address: <http://www.dem.ri.gov/topics/mftopics.htm>

W. Michael Sullivan, PhD
Director, Department of Environmental Management

Public Hearing Items and Proposed Options
Pertaining to Part V - Scallops

Public Hearing Item 9 – Proposed amendments to the bay scallops management program:

Item 1: Proposal to modify the bay scallop season and use of scallop dredges (pg.1 & 2 – sections 5.3 and 5.8)

Item 2: Proposal to amend bay scallop daily possession limit (pg. 1 – section 5.2)



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 V **Bay Scallops**



Annotated 10-09-2009

~~October 25, 2002~~

AUTHORITY: These regulations are adopted pursuant to Chapters 42-17.1, 42-17.6, 20-4, 20-6, 20-8, 20-8.1, 20-9, and 20-10 as well as Sections 20-1-2, 20-1-4, and 20-3-2 thru 20-3-6, ~~20-4 thru 20-10~~, and in accordance with Chapter 42-35, of the Rhode Island General Laws of 1956, as amended.

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**RHODE ISLAND MARINE FISHERIES
STATUTES AND REGULATIONS**

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 Chapter 42-17.1, 42-17.6, 20-4, 20-6, 20-8, 20-8.1, 20-9, and 20-10 as well as Sections 20-1-2, 20-1-4, and 20-3-2 thru 20-3-6, 20-3-2 thru 20-3-6, 20-4 thru 20-10 and in accordance with Chapter 42-35, 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 (#1838)

On the effective date of these rules and regulations, all previous rules and regulations, and any policies regarding the administration and enforcement of Part V (~~#1838~~) 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.

~~October 25, 2002~~

~~Honorable Edward S. Inman III
Secretary of State
217 State House
Providence, RI 02907~~

~~Dear Mr. Secretary:~~

~~Pursuant to the provisions of Chapter 42-17.1 and 20-3, and in accordance with 42-35 of the Administrative Procedures Act of the General Laws of Rhode Island, 1956 as amended, the Department of Environmental Management has adopted regulations governing the commercial harvest of shellfish.~~

~~The purpose of this filing is to prohibit scallop dredging in Point Judith Pond during the 2002 scallop season; and to eliminate language prohibiting the use of SCUBA to harvest shellfish in Charlestown, Green Hill, and Quonochontaug Ponds for consistency with the RI General Laws.~~

~~This regulation becomes effective 20 days from filing.~~

~~Sincerely,~~

~~John A. Stolgitis,
Chief~~

R.I. Marine Fisheries Statutes and Regulations
PART V - Bay SCALLOPS

5.1 Licenses

5.1.1 Residents: are not required to obtain a license, provided they do not exceed the non-commercial daily catch limit **for bay scallops**, and provided that such scallops shall not be offered for sale. (ref RIGL 20-6-1) [Penalty - Part 6.6; (RIGL 20-6-13)]

5.1.2 Non-residents: R.I. General Laws **§20-2-22** **does** not provide for a non-resident **bay** scallop license. Therefore, the DEM currently interprets that omission as a prohibition on non-resident **bay** scalloping. RIMFC REGULATION [Penalty - Part 6.6; (RIGL 20-6-13)] (ref RIGL 20-6-1)

5.1.3 Commercial License: **The issuance of license or endorsement to commercially harvest bay scallops and offer such scallops for sale are governed by RIDEM Rules and Regulations Governing the Management of Marine Fisheries and** ~~A commercial scallop license shall be issued only to a resident of Rhode Island. and shall be valid only for the season for which it is issued. The fee for a commercial scallop license is two hundred dollars (\$200); or three hundred dollars (\$300) for a multipurpose license.~~ (ref RIGL 20-2-25 and 20-2-28.1) [Penalty - Part 1.16; RIGL (20-1-16)]

5.2 Daily Catch Limits

Item 2

5.2.1 Residents: A resident of this State may take not more than one (1) bushel of **bay** scallops per day without a license, provided that such scallops shall not be sold or offered for sale. ref (RIGL 20-6-1) [Penalty - Part 6.6; (RIGL 20-6-13)]

5.2.2 Commercial License: A person holding a **license or endorsement to commercially harvest bay scallops and offer such scallops for sale** ~~commercial scallop license or a multipurpose license shall~~ **may** take in any one (1) day not more than five ~~(5)~~ **(3)** bushels of **bay** scallops, including shells, per day/per boat/per license from the waters of the State. ref RIGL 20-6-16; RIMFC REGULATION [Penalty - Part 1.16 or 6.6; (RIGL 20-1-16 or 20-6-13)]

Item 1

5.3 Bay Scallops - Open Season -- Unless otherwise specified in regulations adopted by the ~~Marine Fisheries Council,~~ **Department of Environmental Management,** the open season for taking **bay** scallops from the waters of the state shall be between sunrise of the first ~~day [Saturday (RIMFC REG)]~~ of **October November** and sunset on the last day of December ~~of every year annually.~~ Any person taking **bay** scallops in

violation of this Section shall upon conviction be fined not less than fifty dollars (\$50) nor more than five hundred dollars (\$500) or imprisoned not more than thirty (30) days, for each offense. (RIGL 20-6-3)

5.4 Taking and Possession of Seed Bay Scallops -- Every person taking any seed **bay** 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 not exceeding thirty (30) days, or both, for each offense. For the purpose of this ~~Chapter section~~, a “seed **bay** scallop” means a **bay** 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) [Penalty - (RIGL 20-6-17)]

5.5 Transplanting of Seed Bay Scallops --The Director of Environmental Management may conduct **bay** scallop transplant programs as may be appropriate to enhance **bay** scallop stock, seed depleted areas, and further the **bay** scallop harvest in the State. (RIGL 20-6-22)

5.6 Sale of Wild Harvest Bay Scallops during the Closed Season -- Any person offering for sale any **bay** scallops other than during the open season for taking **bay** scallops shall be fined not less than twenty dollars (\$20) nor more than one hundred dollars (\$100) for each quart offered for sale, or be imprisoned not exceeding thirty (30) days, or both; provided, however, it shall be lawful to have in possession or offer for sale frozen scallops legally taken. (RIGL 20-6-18) [Penalty - Part 5.5; (RIGL 20-6-18)]

5.7 Opening Shellfish on Water -- No person shall possess the meats of more than six (6) shellfish while shellfishing on the waters of the State or throw shells of open **bay** scallops onto the **bay** scallop beds. (RIGL 20-6-21) [Penalty - Part 6.6; (RIGL 20-6-13)]

Item 1

5.8 Bay Scallop Dredging Regulations Harvest Methods

~~5. 8.1 13~~ Harvesting by Dip-Net -- The use of all methods for harvesting bay scallops except dip-netting from a boat will be prohibited until sunrise, **November 15 the first day of December**, annually in the following **Shellfish Management areas Areas**:

~~Narrow (Pettaquamscutt) River, Point Judith Pond*, Potter Pond, Green Hill Pond, Ninigret (Charlestown) Pond, Quonochontaug Pond, Winnapaug (Brightman) Pond, Pawcatuck River/Little Narragansett Bay;~~

~~*For the 2002 scallop season, harvesting of scallops by dredge is prohibited within Point Judith Pond.~~

Winnapaug Pond, Quonochontaug Pond, Ninigret Pond, Green Hill Pond, Potter Pond, Point Judith Pond, Bissel Cove, High Banks, Potowomut Area A, Potowomut Area C, Greenwich Bay, Mill Gut, Bristol Harbor Shellfish Transplant Area, Kickemuit River, and Sakonnet River.

5.8.2 Areas Where Dredging is Prohibited -- The use of scallop dredges is prohibited at all times in established shellfish management closures zones identified in "Part IV Shellfish" and listed below:

Winnapaug Pond (see 4.12.2), Quonochontaug Pond (see 4.12.3), Ninigret Pond (see 4.12.4), and Potowomut Management Area "C" (see 4.27), and Jenny's Creek (see 4.29).

5.8.3 8 Number, Size, and Handling of Dredges. Unless otherwise specified by regulation of the ~~Marine Fisheries Council~~ Department of Environmental Management, no person engaged in the taking of bay scallops shall use more than six (6) single dredges, the blades of which shall not be more than twenty eight inches (28") in width and the bag to be used shall not be more than thirty-six inches (36") in length. Every single dredge shall be towed and hauled aboard the registered boat individually. (RIGL 20-6-19) [Penalty - Part 6.6; (RIGL 20-6-13)]

5.8.4 9 Use of Dredges -- Except as hereinafter provided and unless otherwise specified by regulation of the ~~Marine Fisheries Council~~ Department of Environmental Management, no person shall take any bay scallops, oysters, bay quahaugs, or soft-shell clams from the waters of this State by dredges, rakes, or other apparatus operated by mechanical power or hauled by power boats. No licensed person shall cast, haul, or have overboard any dredges while fishing for bay scallops, oysters, bay quahaugs, or soft-shell clams from the free and common fisheries of this State, nor shall any licensed boat be used for fishing bay scallops, oysters, soft-shell clams, or bay quahaugs with dredges, except as provided in this section, provided that any person having a license issued under this Title for the taking of bay scallops may use a dredge or dredges, not exceeding six (6) in number nor exceeding twenty-eight inches (28") each in width, for that purpose, provided that the licensee shall immediately return all bay scallops, oysters, soft-shell clams, or bay quahaugs caught by the licensee to the waters from which they were taken. Any licensed boat may be used in dredging for mussels by the licensee of that boat, the licensee having first obtained a permit from the Director of Environmental Management allowing the licensee so to do; provided the licensee, while dredging for mussels under the permit granted the licensee by the Director, shall immediately return all bay scallops, oysters, scallops, or bay quahaugs caught by him or her to the waters from which they were taken. The fact of any licensed person being found with bay scallops, oysters, scallops, or bay quahaugs in his or her possession while dredging for mussels shall be prima facie evidence that person was fishing in violation of the provisions of this Chapter and shall be subject to the penalties

and fines imposed thereby. Any resident dredging for surf clams or skimmers, shall not be in violation of this Section if that dredging is done southerly of the coastline of Little Compton, southerly of a line extending from Church Point, in the town of Little Compton, to Flint Point on Aquidneck Island, southerly of the coastline of Aquidneck Island, southerly of a line extending from Castle Hill Point on Aquidneck Island, to Southwest Point of Conanicut Island to Bonnet Point, Narragansett, easterly of the coastline of the town of Narragansett, southerly of the coastline of the towns of Narragansett, South Kingstown, and Charlestown, and westerly to the Connecticut line. For the purpose of this section, "coastline" refers to the land facing the open sea. (RIGL 20-6-7) [Penalty - Part 6.6 (RIGL 20-6-13)]

5.8.5 10 Towing of Dredge during Closed Season. -- Any person who tows a scallop dredge in the waters of the State during the season closed to the taking of **bay** scallops shall, upon conviction, be fined not less than twenty dollars (\$20) nor more than one hundred dollars (\$100) or imprisoned not exceeding (30) days, or both, for each offense. (RIGL 20-6-20)

5.8.6 11 Registration of Boats and Display of Numbers -- No boat shall be used in the taking of quahaugs by dredge or the commercial taking of **bay** scallops unless that boat has been registered with the Director of Environmental Management. Each registered boat shall be issued a certificate of registration and assigned a number, which number shall be displayed on a flat surface in a conspicuous place upon the port side while the boat is engaged in taking quahaugs or scallops. (RIGL 20-6-4) [Penalty - Part 6.6 (RIGL 20-6-13)]

5.8.7 12 Registered Boat Operated Only by Licensee -- Each boat registered pursuant to § 20-6-4 shall be operated only by the person to whom that boat was registered, provided that person is duly licensed for the activity engaged in. Each boat so registered and used shall be limited, no matter how many persons are on board, to the catch limit established for one (1) licensee. (RIGL 20-6-5) [Penalty - Part 6.6 (RIGL 20-6-13)]

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

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 ~~25th day of October, 2002~~ to become effective 20 days from filing, unless otherwise indicated, in accordance with the provisions of 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 of the General Laws of Rhode Island of 1956, as amended.

~~Jan Harmen Reitsma,~~
W. Michael Sullivan, PhD
Director, **Department of Environmental Management**

Notice Given: 11/17/01
Public Hearing: 12/18/01

Filing date: 10/25/2002
Effective date: ~~20 days from filing (11/14/2002)~~