

**STATE OF RHODE ISLAND
DEPARTMENT OF ENVIRONMENTAL MANAGEMENT
DIVISION OF COASTAL RESOURCES
PUBLIC NOTICE CONCERNING PROPOSED RULE MAKING**

Pursuant to the provisions of Chapters 42-17.1, 46-5, and 46-22, R.I. Gen. Laws Sections 32-2-4 and 42-17.10-1, in accordance with R.I. Gen. Laws Chapter 42-35, the *Administrative Procedures Act*, the Director of the Department of Environmental Management (DEM) proposes the adoption of the “*State of Rhode Island Department of Environmental Management Port Operations Regulations and Berthing Management System*” and gives notice of intent to hold a public workshop and a public hearing to afford interested parties the opportunity for public comment.

Public comment will be solicited on the proposed rule making that is intended to adopt the proposed Regulations in order to update and make the rules governing the operation of the state docks located at the ports of Galilee and Newport consistent wherever possible and substitute and repeal the current *Galilee Port Operation Regulations and Berthing Management* and the *Newport Fishing Port Operation Regulations*.

The **public comment hearing** to receive comments concerning the proposed rulemaking will commence at **6:00 PM on Monday, May 19, 2014**, at the Corliss Auditorium, URI Bay Campus, 215 South Ferry Rd, Narragansett, RI, 02882. The hearing room is accessible to the handicapped. A tape recording of the hearing will be made and the DEM will provide interpreter at least (3) business days 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 by calling TTY (711) or (401) 222-5300. Written comments concerning the subject regulations may also be submitted to the Division of Coastal Resources, 301 Great Road, Narragansett, RI 02882, **no later than 12:00 PM on May 19, 2014**.

A **public workshop** will also be conducted by the Department in order to afford interested parties the opportunity to participate in a meeting to discuss the proposal. The public workshop will commence at **5:30 PM on Monday, April 14, 2014**, at the Corliss Auditorium, URI Bay Campus, 215 South Ferry Rd, Narragansett, RI, 02882. The room is accessible to the disabled. Interpreter services for the hearing impaired will be provided if such services are requested at least (3) business days prior to the hearing. Requests for such services may be made in writing or by calling TTY (711) or (401) 222-5300. A recording of the hearing will be made by DEM staff but pursuant to the *Administrative Procedures Act*, Chapter 42-35 of the General Laws, the recording of the workshop shall not be part of record of the promulgation process.

The Department has determined that small businesses will not be adversely impacted by the proposed regulations. However, the public hearing is being conducted to solicit comment on the proposal and to allow public input from small businesses or any cities or towns, which may believe that that may be adversely affected.

A copy of the initial proposed regulations will be available for examination from March 14, 2014, through April 14, 2014, by mail or at the offices of the Division of Coastal Resources, 301 Great Road, Narragansett, RI 02882. The Department intends to post on April 18, 2014 the proposed regulations with any modifications occurring as a result of the March 14, 2014 workshop. These modified proposed regulations will be available for examination from April 18, 2014, through May 19, 2014, by mail or at the offices of the Division of Coastal Resources, 301 Great Road, Narragansett, RI 02882. Electronic copies of the proposed regulation will also be available on the DEM website at the following web address:
www.dem.ri.gov/programs/bnatres/coastal/pdf/portopsdft.pdf.

Janet L. Coit, Director

March 12, 2014

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS
DEPARTMENT OF ENVIRONMENTAL MANAGEMENT
DIVISION OF COASTAL RESOURCES
PORT OPERATIONS REGULATIONS
AND
BERTHING MANAGEMENT SYSTEM

State of Rhode Island
Department of Environmental Management
Division of Coastal Resources
Port Operations Regulations and
Berthing Management System

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I. INTRODUCTION:

Section 1 Purpose

The purpose of these rules and regulations is to establish a system for the provision of proper care of any State run facilities by the Department of Environmental Management.

Section 2 Authority

These rules and regulations are promulgated pursuant to R.I. Gen. Laws Chapters 42-17.1, 46-5, and 46-22, R.I. Gen. Laws Sections 32-2-4 and 42-17.10-1, in accordance with R.I. Gen. Laws Chapter 42-35, the Administrative Procedures Act.

Section 3 Administrative Findings

These rules and regulations are required in order to ensure proper management of the Port facilities under the control of the Department of Environmental Management.

Section 4 Application

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

Section 5 Severability

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

Section 6 Superseded Rules and Regulations

On the effective date of these rules and regulations, any previous regulations and policies regarding administration of the Port of Galilee within the authority of the Department 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.

Section 7 Definition of Terms

“Actively engaged in fishing” shall mean any license holder who has actively fished that license/endorsement.

In order to actively fish that license/ endorsement, the person must demonstrate by dated transaction records, as verified by dealer reports to the Department that he or she has fished at least seventy-five (75) days in the preceding two calendar years, with some of the fishing activity occurring in each of the two years. Evidence as to days fished may be supplemented by one or more Vessel Trip Reports, which specifically reference the license holder’s name and license number, and correspond to dated transaction records, where in the determination of the Department such dates are verified by dealer reports to the Department; where such reports verifiably reflect two or more calendar days at sea during a single trip, those days may be used to establish fishing activity. For the purpose of this definition the term “day” shall mean any 24-hour period or part thereof.

A license holder with a dockside sales endorsement who sells all of his or her lobster and/or crab landings dockside may utilize documentation other than dated transaction records to establish fishing activity, pursuant to the standards and criteria set forth in section 6.7-11(e) of the Rhode Island Commercial and Recreational Saltwater Fishing Regulations.

“Backdown slip” shall mean any water-based parking spot for a vessel by which the vessel backs into the spot stern-side with the bow of the vessel facing seaward.

“Berth” or “berthing” shall mean an assigned location on a pier for a vessel to tie to or to raft alongside another vessel when direct access to the assigned location on the pier is not available; primarily for the purposes of loading and unloading.

“Berth Contract” shall mean the written berth agreement between the Division of Coastal Resources and a vessel’s owner or operator.

“Charter Boat” shall mean a vessel less than 100 gross tons that meets the requirements of the U.S. Coast Guard to carry six or fewer passengers-for-hire for the purposes of engaging in recreational fishing.

“Commercial Fishing Vessel” shall mean a vessel that commercially engages in the catching, taking, or harvesting of fish or marine species or engages in an activity that can reasonably be expected to result in the catching, taking, or harvesting of fish or marine species.

“Department” or “DEM” shall mean the Department of Environmental Management.

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

“Division of Coastal Resources” or “Division” shall mean Division of Coastal Resources of the Department of Environmental Management.

“Facility”, “Pier,” or “Port” shall mean the State owned piers.

“Family Member” – shall mean the spouse, mother, father, brother, sister, child or grandchild of the person holding a valid

berth contract with the Division. For purposes of these regulations in compliance with Executive Order 12-02, “Recognition of Out of State, Same-Sex Marriages” that was issued by Governor Chafee on May 14, 2012, “spouse” shall be defined to include either party who has entered into a marriage that is legally recognized in the state or territory in which the marriage was solemnized.

“Person” shall mean an individual, firm, corporation, society, association, partnership or private or public body.

“Vessel” shall mean the same as “Boat.”

“Headboat” or “Party Boat” shall mean a vessel that holds a valid Certificate of Inspection issued by the U.S. Coast Guard to carry greater than six passengers-for-hire for the purposes of engaging in recreational fishing.

“Off-season temporary berth” shall mean berths that become available for temporary berth assignment purposes as a result permanent berth holder vessels being hauled out of the water for winter.

“Owner” shall mean the owner of the vessel, or in the absence of the owner, such other person or business who is in charge of the vessel on the date of the signed berth contract.

“Port of Galilee” shall mean the improved and unimproved area of the Town of Narragansett, which is located in the west passage of Narragansett Bay.

“Service by a leaseholder” shall mean exclusive use of docks by a leaseholder for loading and unloading of vessels which utilize a leaseholder’s shore-side business.

“State” shall mean the State of Rhode Island.

“Transient vessel” shall mean any vessel without a berth contract.

“Transient Vessel Temporary Berth Contract” shall mean any temporary berth contract entered into with the Division by a vessel owner or operator that is not deemed to be a Temporary Off-Season Berth Contract or a One Year Probationary Period Temporary Berth Contract.

“Temporary Berth Contract” shall mean any contract held by a vessel owner without a permanent berth contract.

II. USE OF PIERS:

1. No vessel shall berth at State owned facilities or at facilities owned by the State and leased to private entities without a signed, current berth contract, or without prior written approval by the Division.

2. The initial application for a berth contract shall be submitted by the vessel owner or operator to the Division on application forms available from Division staff. Applications should be submitted as early as possible since dockage space will be assigned according to the waiting list procedures contained within these regulations. At the time the berth application is submitted, the applicant, and vessel, must hold any necessary licenses, permits, declarations, and insurance required for the specific category of vessel for which the applicant is requesting a berthing assignment.

3. An application waiting list will be maintained by the Division of Coastal Resources for each of the categories of vessels authorized to berth in State owned facilities with the exception of sport fishing vessels. Those applicants who meet the initial application criteria required to enter into a berth contract for that category will be permitted to execute a berth contract in the chronological order by which the applicant appears on the waiting list until all open berth positions are filled. If a qualified applicant does not meet the criteria of the open berth according to the information contained within their berth application, then that

person will not be contacted, will remain at the top of the waiting list and will be given priority once an appropriate berth is open. An applicant is responsible for contacting the Division with any updates and changes to information contained within their berth application to ensure his/her qualification and compliance therein. If the applicant refuses a berth contract when the applicant's name comes up, the applicant will be removed from the waiting list unless the applicant requests that his/her name be placed back on the waiting list. If such a request is received, the applicant will be placed back on the end of the waiting list per the date of refusal. A vessel owner whose application has been approved and who has been so notified, shall pay the required dockage fee and any arrearages owed by the applicant or vessel to be berthed prior to the signing of a berth contract. If such payment is not received within ten (10) days after an applicant's receipt of notice of approval of an application, the State may deem the approval withdrawn, and consider other applications.

4. The Division shall have the right to assign berths to vessels at its sole discretion. Among the factors that the Division should consider in determining such assignments are the following: pier and dock configuration, size of vessel, hull type, berthing space available, and any other factor which will produce the most efficient utilization of berthing space including seniority of the vessel(s).

5. The waiting list shall be reviewed every five (5) years. Applicants on the waiting list will be contacted requesting if they wish to continue being on the waiting list. Failure to respond to such a request will result in the removal of the applicant's name from the waiting list. An applicant whose name has been removed will be required to reapply in order to be placed back on the waiting list. When an applicant reapplies to be placed on the waiting list, that applicant's name will be added to the bottom of the waiting list.

6. A preference will be given in assigning vacant berths to vessels whose owners are Rhode Island residents or business corporations authorized to do business under the laws of the State of Rhode Island.

7. Before entering into a signed berth contract for a permanent berthing position there is a one year probationary period. During this one year probationary period, the new berth holder will be required to sign a temporary berth contract. During this one year probationary period, the temporary berth contract holder must demonstrate compliance with the terms of the temporary berth contract as well as these regulations subject to the discretion of the Division of Coastal Resources. Failure to comply with the terms of either the berth contract or these regulations will result in the revocation of the temporary berth contract and receipt of written notice to the vessel's owner that the vessel must be removed from the port within one (1) week of receiving written notice. If the vessel's owner fails to comply with the removal of the vessel, then the vessel will be removed by DEM or their agents at the vessel owner's expense. If after the one (1) year probationary period the temporary berth contract holder has demonstrated compliance in sole discretion of the Department with the terms of their temporary berth contract and these permanent governing regulations then the vessel's owner may enter into a permanent berth contract.

8. Berth contracts shall be signed and deemed valid for no more than one (1) year from the date of execution. All berth contracts expire on June 30th of the proceeding year of first assignment. All fees previously due shall be paid in full in advance of the issuance of a berth contract. A vessel owner who signs a berth contract and who is not in arrears on any payments or other financial obligations to the Department shall have the option to renew his/her berth contract for the following year. Dockage fees in arrears for fifteen (15) days or more after the due date shall be considered cause for revocation of berth contracts. Revocation of a berth contract will follow receipt of written notice by the vessel's owner that the vessel must be removed from the port within one (1) week of receiving written notice. If the vessel's owner fails to comply with the removal of the vessel, then the vessel will be removed by DEM or their agents at the vessel owner's expense. The Division may postpone enforcing this regulation, at its discretion, if there are circumstances deemed to warrant an enforcement delay. Postponement of enforcement by the Division does not waive future enforceability. Berthholders who breach their berth contract and are provided notice to leave the port, lose all seniority rights and cannot be reinstated in the port or be placed on a waiting list for entry into the port until all past due amounts are paid in full plus any interest due. Furthermore, if a former berthholder is allowed to reapply for a berth in the port, said

applicant's name shall be placed at the bottom of the waiting list and the applicant's position on the waiting list will be based on the date the application was received.

9. If a berth contract holder is in arrears with their dockage fees or other financial obligations to the Department, the berth contract holder may enter into a signed, written payment agreement with the Division to bring the outstanding debt current. Failure to comply with this payment agreement will void the payment agreement, the berth contract will be revoked and the berth holder will be required to leave the Port. All fees due shall be paid in full in advance of the renewal of the berth contract. If a berth contract holder is in arrears with their dockage fees and has entered into an approved and signed payment agreement with the Division, then a berth contract may be renewed subject to the approval of the Division.

10. When a vessel is sold, the berth contract does not transfer with the sale of the vessel. The berth contract is valid for the remainder of the contract term and may be renewed by the original vessel owner provided that the new vessel is purchased within one (1) year and all fees remain paid in full. The sale of the ownership of 50% or more in the ownership of a vessel shall be deemed to be the sale of the vessel with the same prohibition on the transfer of berthing rights as described above. If the vessel is incorporated, the original owner of the vessel or corporation must own 51% or more of the corporation for the vessel to still be subject to the terms of the original berth contract. If the vessel is incorporated, and the original owner of the vessel or corporation owns less than 51% of the corporation then the original berth contract is void and the vessel must be removed from the Port.

11. Once a vessel is sold, the berth contract holder has one (1) year to acquire a new vessel or else waive berth contract renewal rights. During this time the berth contract holder will continue to be responsible for payment to the Department for dockage fees billed at the original rate based on the size of the sold vessel and berthing position. Once a berth contract holder acquires a new vessel the berth contract holder will be allowed to return to the port only if, (1) the berth contract holder is current on the applicable berth fees and (2) the berth contract holder is returning to the port with a vessel that the Division deems appropriate for the original berth slip assigned. If the berth contract holder acquires a new vessel which is deemed not size appropriate for the original berth slip by the Division, then a new berthing will be assigned appropriate for the size of the new vessel. If no appropriate berthing slip is available for the size of the new vessel, then a new slip assignment will not be issued and the berth contract holder will be placed at the top of the waiting list and given priority once an appropriate berth is open. If a berthing slip is not available for the new vessel, billing will cease until a new berth is assigned for the new vessel. Until an appropriate berth slip is available and assigned to the berth contract holder, the berth contract holder shall not be allowed to enter at the Port with the new vessel. If a new berth slip is assigned to the new vessel, the dockage fees required pursuant to the berth contract will be amended to reflect the change in berth assignment for the new vessel.

12. In the event the berth contract holder wishes to substitute a vessel, the berth contract holder shall give the Division full particulars and request prior approval to substitute the new vessel. No vessels may be substituted within the Port without prior written approval from the Division.

13. Berth contracts will be maintained unless a vessel's owner fills out a cancellation of berth contract form. Billing will cease on the day the cancellation form is signed and returned to the Division of Coastal Resources main office located within the Port of Galilee. There is no penalty for early cancellation of a berth contract so long as the vessel is removed from the Port within one (1) week of receipt of notice of cancellation. If after one (1) week the vessel has not been removed from port, the vessel will be given transient status and billed according to the transient vessel berth holder provisions contained within these regulations.

14. Vessel owners shall promptly notify the State of any change in home or business address, change in boat name, vessel's length or weight, or any information contained in a previously filed application form or berth contract.

15. Should the holder of a berth contract die, a berth contract may transfer to a duly qualified family member of the berth contract holder. Family Members of the contract holder must meet the eligibility

requirements and standards of dockage and regulation requirements in order to retain a berth contract. If a family member meets the eligibility requirements and standards of dockage and regulation requirements deemed to enter into a berth contract, the original berth contract will be void and a new berth contract between the Division and the family member with a one (1) year probationary period will apply.

16. If the Division is required to provide written notice to a vessel owner pursuant to these regulations or an executed berth contract, said notice shall be deemed to be complete upon mailing by pre-paid first class postage to the last home or business address provided to the Division by the vessel owner and delivery of such notice shall be deemed to have been received by the boat owner three (3) days from the posting of notice in any office of United States Post Office located within the State of Rhode Island.

17. A permanent berth contract holder shall notify the Division in advance if his/her berth will not be used for a period of two weeks or longer. If the Division is provided such advance notice, the berth contract holder has up to one (1) year of leaving Port to return to Port in order to be reassigned his/her berthing assignment. During the period away from Port, the berth contract holder will continue to be billed despite absence of the vessel. The Division may not reassign a vessel to the berth to which it was previously assigned unless, prior to vessel's return to port, all of the berth contract holder's dockage fees are current.

18. No refund will be made for any unused dockage.

19. The Division shall have the right to terminate a contract and require removal of the berth contract holder's vessel for any violation of these regulations, including, but not limited to, non-payment of fees when due, and violations of these regulations.

20. The fee for a berth is dependent upon the length of the vessel. For this purpose, the length shall be determined by the overall length of the vessel on the Coast Guard documentation or Rhode Island vessel registration rounded to the nearest foot. In addition, any changes made to the length of the vessel not reflected in the Coast Guard documentation or the Rhode Island vessel registration, such as but not limited to the addition of a transom extension or pulpit, shall be taken into account to determine the vessel's overall length to the nearest foot and shall be reflected in the fees for berthing. The Division reserves the right to re-measure and adjust all billings if the length overall (LOA) of the vessel is different than what is stated within the berth contract.

21. A berth assignment list shall be maintained by the Division. Berths may be reallocated at the sole discretion of the Division from time to time in order to make more efficient use of the piers.

22. The berth contract schedule is:

A. Berth contracts shall cost \$40.00 per foot of vessel length per annum.

B. Port of Galilee

1) The minimum rate for the medium duty commercial fishing docks is based on 40-foot vessels. All vessels at the medium duty backdown commercial fishing docks shall be charged for the minimum plus all footage over forty (40) feet.

2) The minimum rate for the light duty backdown docks is based on 35-foot vessels. All vessels at the light duty backdown docks shall be charged for the 35-foot minimum plus all footage over thirty-five (35) feet.

3) The minimum rate for all vessels within the Port not berthed in a medium or light duty dock is based on 25-foot boats. All vessels less than twenty-five (25) feet in length shall be charged at the 25-foot minimum.

C. Port of Newport, State Pier #9

1) The minimum rate for all vessels within the Port not berthed in a medium or light duty dock is based on 20-foot boats. All vessels less than twenty (20) feet in length shall be charged at the 20-foot minimum.

D. Transient vessels are all vessels without a berth contract. All transient vessels must apply directly to the Division at its office at the Port of Galilee for a transient vessel temporary berth contract. A transient vessel owner, master, or designee must sign a transient vessel temporary berth contract in order for the transient vessel to remain in Port and be assigned a temporary berth. The daily minimum rate for transient vessels is \$50.00 per day. All vessels longer than 50-feet shall be charged \$50.00 per day plus \$1.00 per foot per day for all footage over fifty (50) feet. The owner of a transient vessel who has been issued a transient vessel temporary berth contract shall be assessed a fee of \$50.00 dollars plus \$1.00 per foot for all footage over fifty (50) feet per day.

1) A transient vessel temporary berth contract holder shall make the berth available to the permanent berth contract holder to whom the berth is assigned upon receiving notice. Transient vessel temporary berth contract holders may be required, by the Division, to move or vacate the berth or Port upon twenty-four (24) hours notice. Upon receipt of notice to move or vacate the berth by the Division the transient vessel temporary berth contract holder must comply with the instructions contained within the notice within twenty-four (24) hours.

2) If a vessel owner fails to comply with the written notice to remove the vessel, then the vessel shall be removed at the owner's expense by the Division.

E. During the off-season (as berths become vacant as a result of boats being hauled out for the winter), the Division may temporarily assign these berths in accordance with the following fee schedule:

1) Off-season temporary berth contracts shall cost \$40.00 per foot of vessel length per annum.

2) There is no waiting list for temporary off-season berths. Temporary off-season berths shall be assigned on a first come first serve basis, including assignments to noncommercial vessels, in accordance with the availability of space. These assignments shall not contribute toward the port seniority nor change one's relative position on any full time berth waiting list.

3) Berth assignments are made at the Division's sole discretion. Off-season temporary berth assignments may be reallocated at the sole discretion of the Division, including, but not limited to, the maximum utilization of State infrastructure for the continued flow of commerce. Upon receipt of notice to move or vacate the berth by the Division the off-season temporary berth contract holder must comply with the instructions contained within the notice within twenty-four (24) hours.

4) An off-season temporary berth contract holder shall make the berth available to the permanent berth contract holder to whom the berth is assigned upon receiving notice. Off-season temporary berth contract holders may be required, by the Division, to move or vacate the berth or port upon twenty-four (24) hours notice. Upon receipt of notice to move or vacate the berth by the Division the off-season temporary berth contract holder must comply with the instructions contained within the notice within twenty-four (24) hours.

5) If a vessel owner fails to comply with the written notice to remove the vessel, then the vessel shall be removed at the owner's expense by the Division.

23. A berth contract for berthing space does not bestow the berth contract holder with the right to occupy land on the waterfront in any manner except as explicitly provided in these regulations.

24. Berthing Contract Criteria by Vessel Class:

A. There are no Charter Boats, Headboats, or Sports Fishing vessels allowed to berth at State Pier #9, Port of Newport.

B. Charter Boats:

1) Berth contracts will be entered into only for those vessels which are, and will be, actively engaged as charter boats during the year for which the berth contract is signed.

2) Applicants for a berth contract must hold all required Federal licenses to carry passengers for hire.

3) Applicants for a berth contract must hold all State required licenses for charter vessels.

4) Copies of all applicant's Federal and State licenses required for charter vessels must be include in an applicant's initial application and any subsequent renewal applications for a berth contract.

5) Applicants for a berth contract must demonstrate that they will be engaged in carrying passengers for hire by certifying:

a) That the vessel is documented in Coastwise Trade if its over five (5) tons (to carry passengers for hire);

b) That the vessel was used for carrying passengers for hire by certifying through official transaction records on at least twenty (20) days of the previous year; and/or,

c) That the vessel was actively advertising with a sign at a location approved by the Division and in a forum that is approved by the Division during the appropriate fishing seasons.

6) Upon application for the renewal of a permanent berth contract, applicants who do not meet the above minimum requirements may be given probationary status at the sole discretion of the Division. Postponement of enforcement by the Division does not waive future enforceability.

C. Headboats (Party Boats)

1) Berth contracts will be issued only for those vessels which are and will be actively engaged in carrying passengers for hire on a daily scheduled basis during the year for which the contract is issued.

2) Applicants for a berth contract must be holders of a valid license from the Coast Guard for carrying more than six (6) passengers for hire with appropriate tonnage in addition to all required Federal licenses for the operation of that type of vessel. Copies of a valid license from the Coast Guard and required Federal licenses must be included in an applicant's initial application and any subsequent renewal applications for a berth contract.

3) Vessels must hold a current Certification of Inspection by the U.S. Coast Guard and should be included in applicant's initial application and any subsequent renewal applications for a berth contract.

4) Applicants for berthing contracts must meet all State requirements for Party and Charter Vessels.

5) Applicants for berth contracts must demonstrate that they will be engaged in carrying passengers-for-hire by certifying:

a) That the vessel is documented in Coastwise Trade (to carry passengers for hire);

b) That the vessel was used for carrying passengers for hire on at least twenty (20) days of the previous year; and/or,

c) That the vessel was actively advertising with a sign at a location approved by the Division of Coastal Resources and in a forum that is approved by the Division of Coastal Resources during the appropriate fishing seasons.

6) Upon application for the renewal of a permanent berth contract, applicants who do not meet the above minimum requirements may be given probationary status at the sole discretion of the Division. Postponement of enforcement by the Division does not waive future enforceability.

D. Commercial Fishing Boats

1) Berth contracts will be issued to only those vessels which are and will be actively engaged as commercial fishing vessels during the year for which the contract is signed.

2) Initial applicants and renewals for berth contracts must demonstrate that they are engaged in commercial fishing by certifying through valid dated transaction records that the vessel was engaged in commercial fishing on at least seventy-five (75) days over the past two calendar years with at least some activity in each of the two (2) years.

3) Initial applicants and renewals for berth contracts must list vessel operators that hold the appropriate fishing licenses, be holders of an appropriate current Rhode Island commercial fishing license authorizing the commercial harvest of fish or marine species, or current Rhode Island landing license.

4) Upon application for the renewal of a permanent berth contract, applicants who do not meet the above minimum requirements may be given probationary status at the sole discretion of the Division. . Postponement of enforcement by the Division does not waive future enforceability.

E. Sport Fishing Boats

1) No new Sport Fishing berths will be available in the Port of Galilee. Only the vessels which currently hold a Sport Fishing berth contract are allowed to berth within the Port of Galilee.

2) A Sport Fishing Vessel (SVF) berth contract is only valid for those specific vessels which are currently authorized berthing rights as SFV into the Port of Galilee. Once a vessel's owner sells the subject boat and purchases a new sport fishing vessel the berth contract is void and berthing privileges will not be extended to any vessel. Instead, the sport fishing vessel owner loses all berthing privileges within the Port of Galilee and the new vessel is not permitted to enter the Port.

3) Should the holder of a Sport Fishing berth contract die, the berth contract will not become the right and obligation of his/her estate and the estate has one (1) month to remove the Sport Fishing vessel from the Port of Galilee.

25. All vessels in Port must have all of their U.S Coast Guard Documentation, Rhode Island Certificate of Numbers (Registration) and Vessel Declaration current and valid at all times while in Port.

26. Dumping of garbage, oil, refuse, fish offal, or other substances in public tidewaters of the State is prohibited by State and Federal Laws and shall be considered cause for immediate revocation of a berth contract. Waste oil from fishing vessels shall be properly disposed of in the designated waste oil collection tanks. Used filters shall only be properly disposed of in the provided collection barrels. The collection areas shall be kept clean, free of debris, and oil spills shall be immediately reported to the Division.

27. No trash shall be stored on the docks and piers. A dumpster maintained by the Division, located at the Division's office in the Port of Galilee, is reserved exclusively for the disposal of waste generated by commercial fishing vessels whose owners hold berth contracts. The use of the dumpster for disposal of any waste other than that waste generated by commercial fishing vessels whose owners hold berth contracts constitutes a violation. In addition, any illegal disposal by a berth contract holder constitutes a violation of these regulations and, as such, shall result in the termination of the berth contract of the violator by the Division.

28. The use of, or the tampering with, Port electricity or infrastructure by any individual, including fishing vessel owners or operators, without prior Division consent, is strictly prohibited. Any illegal use of Port electricity or infrastructure by a berth contract holder and/or his/her agents shall result in the immediate termination of the berth contract of the violator by the Division.

29. Storage of Gear

A. Port of Galilee

1. No gear, barrels, nets, equipment, or other material shall be allowed to remain on a pier or on land adjacent and providing access to the pier without prior written authorization from the Department. Passage over the pier shall remain unobstructed at all times. However, plastic 35-gallon bait barrels are permitted on the commercial fishing docks.

B. Port of Newport, State Pier #9

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

ii. All pots must be removed from the pier for the period August 1 through August 14 inclusive each and every year.

iii. A portion of the "Heavy Duty Pier" will be used for mobile gear storage (nets). All nets will be stored on pallets and not directly on the deck of the pier. All stored gear must be kept neat and stored in an orderly fashion.

2) Passage over the piers shall remain unobstructed at all times. No gear, barrels, equipment or other materials shall be allowed to obstruct passage to the piers. The center four feet (4') of the "L" Pier must be kept clean at all times.

3) Unless previously authorized by the Division, any storage outside of a vessel must be kept freely accessible for Division inspection.

4) No chest freezers shall be allowed to remain on a pier or on land adjacent and providing access to a pier.

30. Storage of Bait at either facility is only permitted in compliance with the following restrictions:

A. Storage of unrefrigerated bait must be in sound barrels, i.e. plastic barrels without leaks and with tight fitting lids;

B. Barrels must be covered at all times and shall not obstruct passage on the docks;

C. All unrefrigerated bait must be salted down; consistent with the following standards;

- D. All bait must be salted or brined down on a ratio of one (1 lb.) pound salt to ten (10 lb.) pounds skate, and one (1 lb.) pound salt to six (6 lb.) pounds of other bait in alternating layers of fish and salt;
- E. Barrels must be scrubbed out with salt water and a biodegradable cleaner before use;
- F. Salted bait may be kept no longer than a one (1) month period during the period of October 1 through March 15 and for no longer than two (2) weeks during the period of March 16 through September 30;
- G. Maggot infested bait must be removed from the pier and properly disposed of immediately;
- H. Division staff has the right to inspect barrels stored on the State Piers and order the immediate removal of bait which they deem to be in noncompliance with these regulations or otherwise offensive. Such an obligation is recognized as a condition of tenancy.
- I. Bait barrels shall not be handled in such a manner as to result in spilling of bait or juices on the asphalt deck of State Pier #9 in the Port of Newport.
- J. Baiting is permitted on the cement bulkhead cap on State Pier #9 in the Port of Newport (except on the Western face of the bulkhead). The bulkhead used for baiting shall be washed down immediately upon completion of the baiting.

31. A section of the South-Facing Bulkhead located between the skiff dock and first backdown slip at State Pier #9, Port of Newport will be designated for short-term vessel use.

- A. Short-term storage of gear in this area is restricted to seventy-two (72) hours. Authorized uses are loading and unloading pots and fishing gear, running out cables, minor welding, carpentry, outfitting, and engine repair, electrical equipment repair, net repairs (for no longer than four (4) hours), loading/unloading bait barrels: and fueling of vessels provided said fueling operations do not occur adjacent to welding or other potential fire hazards.
- B. The operator of any vessel using the above described bulkhead service area shall ensure that the area employed is clean and in good repair prior to vacating the area.
- C. Any vessel which does not possess a valid berth contract is prohibited from using the above described bulkhead service area without the prior written approval of the Division and payment of the transient rate for the use of the Pier.

32. The Bulkhead located west of the western side of the Great Island Bridge:

- A. The Bulkhead shall be used primarily as a loading/unloading zone for the commercial fishing vessels.
- B. Power washing of Lobster Pots is allowed only in the designated area near the Great Island Bridge. Pots must be removed immediately upon completion of the cleaning so others may use the area. The area must be cleaned upon the completion of the work.
- C. There is no storage of pots/ gear of any kind along the bulkhead. All pots/ gear must be removed within one (1) week. If any pots/gear are left for a period of longer than one week, they shall be deemed abandoned and promptly removed of by the Division.
- D. There shall be no storage of pots/ gear in immediate loading areas along the bulkhead at any time for any reason.
- E. There shall be no overnight tie-ups along the bulkhead without written permission from DEM staff with a permission pass posted in the wheelhouse window in plain sight.
- F. The bulkhead may be used during storm conditions by Port of Galilee tenants sheltering their vessels from the wind without written permission. However, the captain must remain on board.

33. The State shall have a lien upon a vessel for any monies due for fees which are in default, which lien may be enforced by sale of vessel in accordance with the procedure set forth in Title 34, Chapter 35, of the General Laws of Rhode Island 1956 as amended. The owner of the vessel, or his/her agent, shall be subject to penalties set forth in Title 46, Chapter 22 of the General Laws of 1956, and any amendments thereto. For purposes of R.I. Gen. Laws § 46-22-9(e), a failure to pay all fees when due shall effect an automatic withdrawal of any consent by the State of Rhode Island. In addition, the vessel, as an *in rem* obligation, and the owner of the vessel, as a personal obligation, shall be deemed jointly and severally liable for any financial obligations incurred by the vessel and owing to the Department, including, but not

limited to, any berthing arrearage as well as any expense incurred in order to seize and remove the vessel from Port or sell the vessel at public auction.

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

35. A berth contract for berthing space does not bestow the berth contract holder with the right to occupy land on the waterfront in any manner except as explicitly provided in these regulations.

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

37. There shall be no modifications or alternations to the pier without prior approval of the Division.

38. A vessel's owner shall be responsible for any damage to port docks or facilities caused by his/her vessel or crew. Any damages to port docks or facilities may, at the discretion of the Division, be repaired by DEM at the vessel owner's expense. Such an expense shall constitute a debt that a vessel's owner must satisfy prior to being authorized to enter into a berth contract with the Department.

39. Abandoned or illegally berthed vessels will be removed from the Pier at the owner's expense.

III. NEWPORT FISHING ADVISORY GROUP:

1. The Newport Fishing Advisory Group shall be established by the Director in order to advise and/or assist the Department relative to the preparation of a master plan and rules and regulations for the development and operation of State Pier #9, Port of Newport. The Director or his/her designee shall call meetings of the advisory group only upon reasonable notice.

2. Uses and/or activities which are or may be reasonably associated with and/or necessary to the berthing of commercial fishing vessels at the Port of Newport, State Pier #9 which are not otherwise addressed herein may be permitted by the Director after opportunity for review by the Newport Fishing Advisory Group. In permitting such uses and/or activities, the Director shall consider the following:

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

IV. NEWPORT LOBSTER SHACK COOPERATIVE:

1. There shall be no dockside sale, barter, or trading of lobster or crab within the state facilities of the Port of Newport with the exception of the single, designated point of sale location called, "The Newport Lobster Shack." The point of sale location shall be operated and managed by the fishers directly by an association of berth holders known as the "Fishers in Newport."

2. Participation in the lobster cooperative for sale of lobsters/crabs directly by fishers to the public is available to any berth holder possessing a valid endorsement issued pursuant to Section 6.8-9 of the RIDEM Marine Fishery Regulations/ Commercial and Recreational Saltwater Fishing License Regulations.

V. LAND USE RULES AND REGULATIONS:

1. The Division in its sole discretion may designate any area of the Port as a "fire lane," including but not limited to the strip of land along the bulkhead. Such areas that are designated as a "fire lane," shall be properly signed and are required to be kept clear and unobstructed at all times. No gear storage, parking, standing vehicles, cutting boards, or bait barrels shall be allowed in a fire lane, except for the temporary loading and unloading equipment with the driver in line of sight of the vehicle.

2. No person shall bring into the port area any refuse, ashes, waste oil, or garbage. In addition, there shall be no disposal of fish and fish parts on the bulkhead or in the waters of the State.
3. Parking shall be allowed only in allocated and/or designated parking space. All no parking zones shall be signed and violators shall be tagged, towed, and/or fined.
4. Camping and/or sleeping in vehicles as the facility is prohibited.
5. Abandoned or illegally parked vehicles will be towed at owner's expense.
6. All rights-of-way shall be kept free and clear of obstruction by vehicles, gear, equipment, etc.
7. All lessees shall obtain written approval from the Department of Environmental Management prior to undertaking activities that alter the leased property. Any other required state and local permits shall be obtained as necessary.

VI. TRAFFIC REGULATIONS:

1. Parking shall be allowed only in allocated and/or designated parking spaces. Vehicles must have current parking stickers. Any vehicles which are found in areas designated "No Parking Zones" shall be tagged and fined as well as the vehicle(s) towed away at the owner's expense.
2. All designated rights of way shall be kept free and clear of obstruction including but not limited to vehicles, gear, or equipment. A ten-foot zone around all electric power pedestals and all water hydrants are to be kept free and clear of obstruction including but not limited to vehicles, gear, or equipment.

VII. PORT OF GALILEE STATE PIER #3 TRAFFIC REGULATIONS:

1. No parking of motor vehicles is allowed on State Pier 3 between 3:00 AM and 5:00 AM. Daytime parking allowed on the Southern half of Pier #3 for motor vehicles with valid commercial fishing stickers issued by the DEM. Illegally parked motor vehicles may be towed at the expense of the vehicle's owner.
2. No commercial fishing vessel shall remain tied to Pier #3 for longer than two weeks without prior written permission from the DEM.

VIII. PORT OF GALILEE SOUTHEAST (S.E.) STATE PARKING LOT (G):

1. This is a long-term general public parking area, and overflow parking area for fishermen and crew with valid parking permits issued by the Division.
2. No campers, buses, trucks, or other vehicles over 8,800 lbs GVRW shall be allowed in the lot.
3. No camping is allowed.
4. No sleeping in vehicles is allowed.
5. The daily parking fee is ten dollars (\$10.00) per calendar day.
6. Minimum fee for replacement of a lost ticket is one-hundred (\$100.00) dollars.
7. Abandoned vehicles will be towed at the expense of the vehicle's owner.
8. A seasonal parking pass is one hundred fifty (\$150.00) dollars for individuals with a valid Rhode Island driver's license and a Rhode Island registered vehicle. The pass is seventy-five dollars (\$75.00) for senior citizens 65 years of age or older with a valid Rhode Island driver's license and Rhode Island registered vehicle. A seasonal pass is two hundred fifty (\$250.00) dollars for all vehicles with out of state registrations. The pass is transferable to a second vehicle but will only be honored once in any calendar day. The pass can not be loaned to a vehicle to which the pass is not issued. No refunds will be given for unused passes.
9. The issuance of a pass to a vehicle authorized the parking of the subject vehicle on a space available basis. Staff will make every reasonable effort to ensure that adequate parking spaces are available for all vehicles with annual parking pass, it is possible that enough parking spaces may not be available at times of peak demand including, but not limited to holiday periods.
10. Any misuse of parking passes will result in the immediate confiscation of the pass by the Division.

IX. PORT OF GALILEE LOT 240 COMMERCIAL FISHERMEN PARKING AREA:

1. Parking restricted to Commercial Fishermen and vessel crews with valid Commercial Fishing parking stickers.
2. Parking stickers will be issued by the Department for vessel captains and crew. Vessel captains must designate crew members and submit a crew list to the Division to be issued valid commercial fishing parking stickers. Should the Division request proof of employment for crew members or captains, it will be the burden of the applicant to provide such documentation as deemed necessary by the Division.
3. Unauthorized vehicles will be ticketed and/or towed at the expense of the vehicle's owner.

X. PORT OF GALILEE WEST BULKHEAD AREA TRAFFIC REGULATIONS:

1. Parking Area E: Parking for commercial fishermen, charter and "headboat" crews and their customers.
2. No sleeping in vehicles is allowed.
3. Abandoned vehicles will be towed at the expense of the vehicle's owner.
4. Parking Area I: for vehicles with boat trailers attached. (MAP TO BE PROVIDED)

XI. GENERAL RULES AND REGULATIONS:

1. No person shall commit any disorderly or indecent act within the limits of the Ports.
2. No person shall refuse or neglect to obey the directions of any enforcement officer of any other authorized representative of the Department of Environmental Management.
3. No person shall distribute or exhibit in the Port any printed or written material of a commercial nature without written permission of the Division. If official permission is granted, the distributor or exhibitor shall be responsible for removal of all litter, which may result from such distribution. If the distributor or exhibitor fails to comply with the removal of all litter, then the litter will be removed by the DEM or their agents at the distributor's or exhibitor's expense.
4. No person shall offer for sale in the Port any goods or services of a commercial nature without written permission of the Division.
5. No person shall park or otherwise store any trailers on property owned or leased by the Division within the limits of the Port of Galilee or State Pier #9, Port of Newport without prior written permission by the Division.

XII. CURFEW:

1. With the exception of the owners and crew of commercial fishing vessels assigned berth contracts and/or those involved in loading/unloading or servicing vessels at the State owned facilities at the Port of Galilee or State Pier #9, Port of Newport, or those persons possessing a valid Saltwater Recreational Fishing License who are engaged in recreational fishing at the Port of Galilee or State Pier #9, all persons are prohibited from the State owned facilities including at the Port of Galilee or State Pier #9, at any time during the hours between sunset and sunrise.

XIII. PENALTIES:

1. Any person who violates Part II, Section 27, and Parts V through Part XIII in their entirety, of these Rules and Regulations, shall be subject to a civil violation and a fine not to exceed One Hundred (\$100) Dollars pursuant to R.I. Gen. Laws § 32-2-4, for each violation and for other such penalties as State law allows and may forfeit any and all rights to utilize the facility. Jurisdiction over these violations shall be with the traffic tribunal as specified under R.I. Gen. Laws § 42-17.10-1.
2. Any person who violates portion of these rules or regulations set forth above in section 1 of Part XIII shall be subject to a fine not to exceed Five Hundred (\$500.00) Dollars, or imprisoned not exceeding thirty (30) days, pursuant to R.I. Gen. Laws § 46-5-12, for each violation and for other such penalties as State law allows, and the forfeiture of any and all rights to utilize the facility.

XIV. APPEALS:

1. What review, if any, of the Division’s determination to enter into or refuse to enter into a berth contract would be the subject of judicial as opposed to administrative review.
2. In those rare instances in which a decision by the Division pursuant to these regulations would afford a party the opportunity to request a hearing before the Administrative Adjudication Division, the following procedures shall be employed:
 - (a) Any person who feels aggrieved and seeks 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, 1 Capital Way, 2nd Floor, Providence, Rhode Island 02908 within twenty (20) calendar days of receipt of the contested agency enforcement action.
 - (b) Any person who feels aggrieved and seeks an adjudicatory hearing in order to contest a permit or lease denial arising out of an application of these rules and regulations must file said request in writing with the clerk of Administrative Adjudication Division, 1 Capital Way, 2nd Floor, Providence, Rhode Island 02908 within thirty (30) calendar days of receipt of the contested agency permit or license.

XV. EFFECTIVE DATE:

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

DEPARTMENT OF ENVIRONEMNTAL MANAGEMENT

JANET L. COIT, DIRECTOR

DATED: _____

APPENDIX I

**Rhode Island Department of Environmental Management
Division of Coastal Resources
Port of Galilee
301 Great Island Road, Narragansett, Rhode Island 02882
Phone: (401) 783-5555 Fax: (401) 246-2533**

Permanent Berth Contract

This agreement is made between the Division of Coastal Resources and the owner of the vessel described below.

Owner Name(s): _____

Mailing Address: _____ Business Phone: _____

City: _____ State: _____ Zip Code: _____

Residential Address: _____ Home Phone: _____

City: _____ State: _____ Zip Code: _____

Vessel Registration: _____ Expiration Date _____

Overall Length _____ Year _____ Port Assignment _____ Vessel Class _____
Billing Rate _____

Vessel Name _____ Hull Construction Material _____ Dock/Slip
Assigned _____

Applicants will be accepted only if the following requirements are met:

1. Contract forms filled out in full **including registration and/or documentation numbers.**
2. Any additional documentation required and/or requested by the Division of Coastal Resources is attached to these forms.
3. **FULL payment of all outstanding bills or a written payment agreement and approved payment agreement.**

Payment of first quarter of the year's dockage fees must be made no later than June 15th. Non-payment of fees after the due date shall be considered cause for revocation of this berth contract. If this berth contract is revoked the vessel owner loses all seniority rights and cannot be reinstated in the Port or be placed on a waiting list for entry into the Port until all past due amounts are paid in full plus any interest due. **The Division of Coastal Resources (hereinafter "the Division") shall have a RIGHT TO TERMINATE this berth contract for any valid cause, including, but not limited to, non-payment of fees when due, and violations of this berth contract or regulations promulgated by the Division.**

This berth contract is for one year in length. A vessel owner, who is not in arrears on any payments to the state, shall have the option to renew this berth contract the following year. All fees due shall be paid in full in advance of the renewal of this berth contract. If such option is not exercised **prior to June 30th**, the space will be assigned to the next eligible applicant on the waiting list.

Billing will continue until a vessel's owner fills out a cancellation of berth contract. Billing will cease on the day the cancellation form is signed and returned to the Division's main office located within the Port of Galilee. There is no penalty for cancelling a berth contract early so long as the vessel is removed from the port within one (1) week. **If after one (1) week the vessel still has not been removed from the Port, the vessel will be given transient vessel status and billed at \$50.00 per day. All vessels longer than 50 feet shall be charged \$50.00 per day plus \$1.00 per for per day for all footage over 50 feet.**

The State shall have a lien against the above described vessel (hereinafter "the vessel"), its appurtenances and contents, for any monies due for fees which are in default, **which lien may be enforced by sale of**

vessel in accordance with the procedure set forth in Title 34, Chapter 35, of the General Laws of 1956 and any amendments thereto. The owner of the vessel shall be subject to penalties set forth in Title 46, Chapter 22 of the General Laws of 1956, and any amendments thereto. For purposes of R.I. Gen. Laws § 46-22(e), failure to pay all fees when due shall effect an automatic withdrawal of any consent by the State of Rhode Island. The vessel owner shall be personally liable for any unpaid sums due for dockage charges or for damage caused by the vessel or the vessels' crew to any docks, property or persons at the assigned marina.

This agreement is for the use of an assigned berthing space and does not include the right to occupy land on the waterfront in any manner. Piers are occupied at the sole risk of the users thereof. The Division shall not be liable for the care and protection of the vessel, including its gear, equipment and contents, or for any loss or damage of whatever kind or nature to the vessel, its contents, gear or equipment.

The owner agrees to comply with the dockside rules and regulations, as listed within this agreement as well as the regulations promulgated by the Division for the Port at which the vessel receives a berth assignment. Said regulations are incorporated by reference within this agreement. Breach of this agreement (including violation of the dockside rules and regulations governing the operation of the assigned Port) is cause for the immediate termination of the instant agreement and the owner's berthing privileges. In such a case the Division may remove the vessel from its slip at the owner's risk and expense and reassign the berth to another applicant.

For the purpose of this agreement, the term "owner" shall mean the owner of the vessel, or in the absence of the owner, such other person or business who is in charge of the vessel on the date of this agreement.

This agreement is nontransferable. In the event the berth contract holder wishes to substitute a vessel, the berth contract holder shall give the state full particulars and request prior approval to substitute a new vessel. No vessels may be substituted within an assigned berth without prior written approval from the Division.

Vessel owners shall promptly notify the Division of any change in home or business address, change in vessel name, or vessel's length or weight, or of any information contained in a previously filed application form or berth contract.

If the Division is permitted or required to provide written notice to a vessel owner pursuant to its duly promulgated regulations or the instant contract, said notice shall be deemed to be complete upon mailing by pre-paid first class postage to the last home or business address provided to the Division by the vessel owner and delivery of such notice shall be deemed to have been received by the vessel owner three (3) days from the posting of the notice in any office of United States Post Office located within the State of Rhode Island.

I have read, understood and accepted the terms and conditions as provided in this document as well as the regulations promulgated by Division for the assigned Port that my vessel is issued a berth assignment. Upon entering into this berth contract I also received a copy of the regulations for the Port to which my vessel will be berthed.

Owner's Signature _____
Date _____

BERTH FEE SCHEDULE

The fee for a berth is calculated on the length of the vessel. For this purpose the length shall be determined by the length of the vessel on the Coast Guard documentation or Rhode Island vessel registration rounded to the nearest foot. In addition, any changes to the length of the vessel not reflected in the Coast Guard documentation or the Rhode Island vessel registration such as but not limited to the addition of a transom extension or pulpit shall be taken into account to determine the vessel's overall length to the nearest foot and shall be reflected in the fees for berthing. **The Division reserves the right to re-measure & adjust all billings if the LOA of the vessel is different than what is stated within this contract.**

Berth assignments shall cost \$40.00 dollars per annum for each foot of the vessel's length.

Port of Galilee:

The minimum rate for the medium duty commercial fishing docks is based on 40-foot vessels. All vessels at the medium duty backdown commercial fishing docks shall be charged for the 40-foot minimum rate plus for all footage over forty (40) feet.

The minimum rate for the light duty backdown docks is based on 35-foot vessels. All vessels at the light duty backdown docks shall be charged for the 35-foot minimum rate plus all footage over thirty-five (35) feet.

The minimum rate for all vessels within the Port not berthed in a medium or light duty dock is based on 25-foot vessels. All vessels less than twenty-five (25) feet in length shall be charged at the 25-foot minimum rate.

Port of Newport:

The minimum rate for all vessels within the Port is based on 20-foot vessels. Any vessel which is less than twenty (20) feet in length shall be charged a berthing fee calculated as if the vessel were twenty 20-feet in length.

**Rhode Island Department of Environmental Management
Division of Coastal Resources
Port of Galilee
301 Great Island Road, Narragansett, Rhode Island 02882
Phone: (401) 783-5551 Fax: (401) 246-2533**

Temporary Berth Contract

This agreement is made between the Division of Coastal Resources and the owner of the vessel described below.

Owner Name(s): _____

Mailing Address: _____ Business Phone: _____

City: _____ State: _____ Zip Code: _____

Residential Address: _____ Home Phone: _____

City: _____ State: _____ Zip Code: _____

Vessel Registration: _____ Expiration Date _____

Overall Length _____ Year _____ Port Assignment _____ Vessel Class _____

Billing Rate _____

Vessel Name _____ Hull Construction Material _____

Dock/Slip Assigned _____

This is a temporary berth contract and a vessel may only be berthed for the duration of this berth contract. This temporary berth contract does not grant the vessel's owner a permanent berth position within any of the Ports regulated by the Division of Coastal Resources (hereinafter "the Division"). **The Division shall have a RIGHT TO TERMINATE this berth contract at the sole discretion of the Division for any valid cause, including, but not limited to, non-payment of fees when due, and violations of this berth contract or regulations promulgated by the Division.**

Berth assignments are made at the Division's discretion. A temporary berth assignment may be reallocated at the sole discretion of the Division to make more efficient use of the Piers. If a temporary berth assignment is reallocated, the vessel owner has twenty four (24) hours to move the vessel to the new berth assignment.

Payment of dockage shall be made when the vessel enters port or based on a separate payment schedule written and approved by the Division and attached to this temporary berth contract. Nonpayment of fees or failure to comply with the written fee schedule will be considered cause for revocation of this temporary berth contract. If this berth contract is revoked the vessel must be immediately removed from the Port within twenty-four (24) hours of written notice by the Division.

The State shall have a lien against the above described vessel (hereinafter "the vessel"), its appurtenances and contents, for any monies due for fees which are in default, **which lien may be enforced by sale of vessel** in accordance with the procedure set forth in Title 34, Chapter 35, of the General Laws of 1956 and any amendments thereto. The owner of the vessel shall be subject to penalties set forth in Title 46, Chapter 22 of the General Laws of 1956, and any amendments thereto. For purposes of R.I. Gen. Laws § 46-22(e), failure to pay all fees when due shall effect an automatic withdrawal of any consent by the State of Rhode Island. The vessel owner shall be personally liable for any unpaid sums due for dockage charges or for damage caused by the vessel or the vessels' crew to any docks, property or persons at the assigned marina.

This agreement is for the use of an assigned temporary berthing space and does not include the right to occupy land on the waterfront in any manner. Piers are occupied at the sole risk of the users thereof. The Division shall not be liable for the care and protection of the vessel, including its gear, equipment and contents, or for any loss or damage of whatever kind or nature to the vessel, its contents, gear or equipment.

The owner agrees to comply with the dockside rules and regulations, as listed within this agreement as well as the regulations promulgated by the Division for the Port at which the vessel receives a temporary berth assignment. Said regulations are incorporated by reference within this agreement. Breach of this agreement (including violation of the dockside rules and regulations governing the operation of the assigned Port) is cause for the immediate termination of the instant agreement and the owner's berthing privileges. In such a case the Division may remove the vessel from its slip at the owner's risk and expense and reassign the berth to another applicant.

For the purpose of this agreement, the term "owner" shall mean the owner of the vessel, or in the absence of the owner, such other person who is in charge of the vessel on the date of this agreement.

This agreement is nontransferable. In the event the temporary berth contract holder wishes to substitute a vessel, the temporary berth contract holder shall give the state full particulars and request prior approval to substitute a new vessel. No vessels may be substituted within a temporarily assigned berth without prior written approval from the Division.

Vessel owners shall promptly notify the Division of any change in home or business address, change in vessel name, or vessel's length or weight, or of any information contained in a previously filed application form or berth contract.

If the Division is permitted or required to provide written notice to a vessel owner pursuant to its duly promulgated regulations or the instant contract, said notice shall be deemed to be complete upon mailing by pre-paid first class postage to the last home or business address provided to the Division by the vessel owner and delivery of such notice shall be deemed to have been received by the vessel owner three (3) days from the posting of the notice in any office of United States Post Office located within the State of Rhode Island.

I have read, understood and accepted the terms and conditions as provided in this document as well as the regulations promulgated by Division for the assigned Port that my vessel is issued a berth assignment. Upon entering into this temporary berth contract I also have received a copy of the regulations for the Port to which my vessel will be berthed.

Owner's Signature: _____

Date: _____

TEMPORARY BERTH FEE SCHEDULE

The fee for a berth is calculated on the length of the vessel. For this purpose the length shall be determined by the length of the vessel on the Coast Guard documentation or Rhode Island vessel registration rounded to the nearest foot. In addition, any changes to the length of the vessel not reflected in the Coast Guard documentation or the Rhode Island vessel registration such as but not limited to the addition of a transom extension or pulpit shall be taken into account to determine the vessel's overall length to the nearest foot and shall be reflected in the fees for berthing. **The Division reserves the right to re-measure & adjust all billings if the LOA of the vessel is different than what is stated within this contract.**

Transient Vessel Temporary Berth Period Billing Rate:

A transient vessel whose owner is given a Transient Vessel Temporary Berth Contract shall be assessed a fee of \$50.00 dollars plus \$1.00 per foot for all footage over fifty feet per day.

Off-Season Temporary Berth Period Billing Rate:

Off-Season Temporary Berth assignments shall cost \$40.00 dollars per annum for each foot of the vessel's length.

Port of Galilee:

The minimum rate for the medium duty commercial fishing docks is based on 40-foot vessels. All vessels at the medium duty backdown commercial fishing docks shall be charged for the 40-foot minimum rate plus for all footage over forty (40) feet.

The minimum rate for the light duty backdown docks is based on 35-foot vessels. All vessels at the light duty backdown docks shall be charged for the 35-foot minimum rate plus all footage over thirty-five (35) feet.

The minimum rate for all vessels within the Port not berthed in a medium or light duty dock is based on 25-foot vessels. All vessels less than twenty-five (25) feet in length shall be charged at the 25-foot minimum rate.

Port of Newport:

The minimum rate for all vessels within the Port is based on 20-foot vessels. Any vessel which is less than twenty (20) feet in length shall be charged a berthing fee calculated as if the vessel were twenty 20-feet in length.

One Year Probationary Period Billing Rate:

Temporary Probationary Berth assignments shall cost \$40.00 dollars per annum for each foot of the vessel's length.

Port of Galilee:

The minimum rate for the medium duty commercial fishing docks is based on 40-foot vessels. All vessels at the medium duty backdown commercial fishing docks shall be charged for the 40-foot minimum rate plus for all footage over forty (40) feet.

The minimum rate for the light duty backdown docks is based on 35-foot vessels. All vessels at the light duty backdown docks shall be charged for the 35-foot minimum rate plus all footage over thirty-five (35) feet.

The minimum rate for all vessels within the Port not berthed in a medium or light duty dock is based on 25-foot vessels. All vessels less than twenty-five (25) feet in length shall be charged at the 25-foot minimum rate.

Port of Newport:

The minimum rate for all vessels within the Port is based on 20-foot vessels. Any vessel which is less than twenty (20) feet in length shall be charged a berthing fee calculated as if the vessel were twenty 20-feet in length.

APPENDIX II



Rhode Island
Department of Environmental Management

DIVISION OF COASTAL RESOURCES

301 Great Island Rd
Port of Galilee
Narragansett, RI 02882

Phone 401 783-5551
Fax 401 783-7285

Permanent Berthing Application

I. Contact Information

Please provide below the information for the Corporation, Partnership, or Person and for each person who has an ownership interest in the vessel as well as the percent ownership (i.e., *each Partner, or Corporate Officer*)

Owner's Name(s):

Mailing

Address: _____

City: _____ State: _____ Zip Code: _____

Business Phone: (____) _____

Residential Address:

City: _____ State: _____ Zip Code: _____

Home Phone: (____) _____

Email Address:

Emergency Contact Name: _____

Phone: (____) _____

II. Vessel information:

Name of vessel:

R.I. Boat Registration Number: (please attach copy): _____

Coast Guard Documentation Number: (please attach copy): _____

Length overall (including pulpit): _____ Beam: _____

Draft (unloaded): _____ Loaded: _____

Hull Type (check one): Wood: _____ Steel: _____ Fiberglass: _____

Is Vessel Insured: Yes _____ No _____ Name of Insurance Co.

Check applicable coverage: Hull: _____ P&I: _____ War: _____ Pollution: _____

Federal fishing permit #: _____

RI commercial fishing/landing license #: _____

RI party/charter boat license #: _____

III. Boat Classification:

Commercial fishing: _____ Charter: _____

Certification by Owner/Authorized Agent:

I, _____, do hereby certify that I acting on behalf of (please check appropriate line)

Myself _____ Said Corporation _____ Said Partnership _____ have read and am familiar with the Port Operations, Regulations and Berthing Management System, and am/is able to and intend to comply with the Port Regulations.

Signed Title/Position

Date

Subscribed and sworn to me before this _____ day of _____ 20_____

Notary Public

My commission expires: _____

For office use only:

Dock Assignment: _____

Billing: _____



Rhode Island
Department of Environmental Management

DIVISION OF COASTAL RESOURCES

301 Great Island Rd
Port of Galilee
Narragansett, RI 02882

Phone 401 783-5551
Fax 401 783-7285

Temporary Berthing Application

I. Contact Information

Please provide below the information for the Corporation, Partnership, or Person and for each person who has an ownership interest in the vessel as well as the percent ownership (i.e., *each Partner, or Corporate Officer*)

Owner's Name(s):

Mailing

Address: _____

City: _____ State: _____ Zip Code: _____

Business Phone: (____) _____

Residential Address:

City: _____ State: _____ Zip Code: _____

Home Phone: (____) _____

Email Address:

Emergency Contact Name: _____

Phone: (____) _____

II. Vessel information:

Name of vessel:

R.I. Boat Registration Number: (please attach copy): _____

Coast Guard Documentation Number: (please attach copy): _____

Length overall (including pulpit): _____ Beam: _____ Draft (unloaded): _____ Loaded: _____

Hull Type (check one): Wood: _____ Steel: _____ Fiberglass: _____

Is Vessel Insured: Yes _____ No _____ Name of Insurance Co. _____

Check applicable coverage: Hull: _____ P&I: _____ War: _____ Pollution: _____

Federal fishing permit #: _____ RI commercial fishing/landing license #: _____

RI party/charter boat license #: _____

III. Boat Classification:

Commercial fishing: _____ Charter: _____

Certification by Owner/Authorized Agent:

I, _____, do hereby certify that I acting on behalf of (please check appropriate line)

Myself _____ Said Corporation _____ Said Partnership _____ have read and am familiar with the Port Operations, Regulations and Berthing Management System, and am/is able to and intend to comply with the Port Regulations.

Signed Title/Position

Date



DIVISION OF COASTAL RESOURCES

301 Great Island Rd
Port of Galilee
Narragansett, RI 02882

Phone 401 783-5551
Fax 401 783-7285

Transient Berthing Application

I. Contact Information

Please provide below the information for the Corporation, Partnership, or Person and for each person who has an ownership interest in the vessel as well as the percent ownership (i.e., *each Partner, or Corporate Officer*)

Owner's Name(s):

—

Mailing

Address: _____

City: _____ State: _____ Zip Code: _____ Business Phone:
(____) _____

Residential Address:

City: _____ State: _____ Zip Code: _____ Home Phone:
(____) _____

Email Address:

Emergency Contact Name: _____ **Phone:**
(____) _____

II. Vessel information:

Name of vessel:

R.I. Boat Registration Number: (please attach copy): _____

Coast Guard Documentation Number: (please attach copy): _____

Length overall (including pulpit): _____ Beam: _____ Draft (unloaded): _____
Loaded: _____

Hull Type (check one): Wood: _____ Steel: _____ Fiberglass: _____

Is Vessel Insured: Yes _____ No _____ Name of Insurance Co. _____

Check applicable coverage: Hull: _____ P&I: _____ War: _____ Pollution: _____

Federal fishing permit #: _____ RI commercial fishing/landing license #: _____

RI party/charter boat license #: _____

III. Boat Classification:

Commercial fishing: _____ Charter: _____

Certification by Owner/Authorized Agent:

I, _____, do hereby certify that I acting on behalf of (please check appropriate line)
Myself _____ Said Corporation _____ Said Partnership _____ have read and am familiar with the Port Operations, Regulations and Berthing Management System, and am/is able to and intend to comply with the Port Regulations.

Signed Title/Position

Date

For office use only:

State of Rhode Island and Providence Plantations
Department of Administration
Budget Office

Fiscal Note for Proposed Administrative Rules (R.I.G.L. Section 22-12-1.1)

Name of Administrative Rule:

State of Rhode Island

Department of Environmental Management

Port Operations Regulations and Berthing Management System

Date of Notice: February 24, 2014 **Date of Hearing:** April 14, 2014-Workshop
May 19, 2014 –Public Comment Hearing

RIGL: These proposed rules and regulations are to be promulgated pursuant to R.I. Gen. Laws Chapters 42-17.1, 46-5, and 46-22, R.I. Gen. Laws Sections 32-2-4 and 42-17.10-1, in accordance with R.I. Gen. Laws Chapter 42-35, the *Administrative Procedures Act*.

FISCAL IMPACT

<i>Revenues</i>		<i>State Expenditures</i>		<i>City/Town Expenditures</i>	
FY 2014	\$ 0	FY 2014	\$ 0	FY 2014	\$ 0
FY 2015	\$ 0	FY 2015	\$ 0	FY 2015	\$ 0
FY 2016	\$ 0	FY 2016	\$ 0	FY 2016	\$ 0

Summary of Policy Change

The proposed rule would promulgate the *State of Rhode Island Department of Environmental Management Port Operations Regulations and Berthing Management System* (the “Regulations”). These Regulations are proposed to be adopted in order to update and make the rules governing the operation of the state docks located at the ports of Galilee and Newport consistent wherever possible and would substitute and repeal the current *Galilee Port Operation Regulations and Berthing Management* and the *Newport Fishing Port Operation Regulations*.

Summary of Fiscal Impact: The Department does not anticipate any substantial, adverse fiscal impacts at the state level due to the amendment of these regulations.

City or Town Impact: There should be no impact at the municipal level since these regulations are imposed upon private businesses engaged in the fishing industry.

Approved:

Thomas Mullaney
Executive Director/State Budget Officer

February 24, 2014

NOTIFICATION FORM

DEPARTMENT OF ENVIRONMENTAL MANAGEMENT

DIVISION OF COASTAL RESOURCES

**SMALL BUSINESS REGULATORY IMPACT AND REGULATORY
FLEXIBILITY ANALYSIS**

Title of Regulation: *State of Rhode Island Department of Environmental Management Port Operations Regulations and Berthing Management System*

These proposed rules and regulations are to be promulgated pursuant to R.I. Gen. Laws Chapters 42-17.1, 46-5, and 46-22, R.I. Gen. Laws Sections 32-2-4 and 42-17.10-1, in accordance with R.I. Gen. Laws Chapter 42-35, the *Administrative Procedures Act*, in order to update and make the rules governing the operation of the state docks located at the ports of Galilee and Newport consistent wherever possible and substitute the proposed regulations for, and repeal, the current *Galilee Port Operation Regulations and Berthing Management* and the *Newport Fishing Port Operation Regulations*.

The Department does not anticipate any substantial, adverse fiscal impacts on small businesses due to the amendment of these regulations. Rather, the Department anticipates that the proposed rule making will assist the small businesses which berth their fishing vessels at the state docks located at the ports of Galilee and Newport.

No additional administrative costs are expected to be incurred or assessed to berth holders for compliance with the proposed regulations.

Regulatory Flexibility Analysis:

The Department has determined that small business may be significantly adversely impacted by the proposed regulations as set forth above. A public hearing will be conducted to solicit comments concerning the various proposals and allow public input from small business or any cities or towns, which may be adversely affected. After considering alternative measures, the DFW will determine the proposed regulation(s) that would be the most protective of the Rhode Island fisheries industry.

SMALL BUSINESS IMPACT STATEMENT (For Existing Regulations)

In order to accurately predict the impact the adoption, amendment, or repeal of a regulation will have on small businesses, the promulgating authority must conduct a thorough analysis that not only considers the potential effects of the action but also quantifies the costs, if any, associated with each. The questions below are designed to aid promulgating authorities in conducting their analysis.

Agency Submitting Regulation: RI Department of Environmental Management (RIDEM) –
Division of Coastal Resources

Subject Matter of Regulation: *Port Operations Regulations and Berth Management System* : To facilitate the appropriate use of state commercial fishing docking infrastructure in support of multiple small businesses in the commercial fishing community.

ERLID No: TO BE ASSIGNED BY THE SECRETARY OF STATE

Statutory Authority: These proposed rules and regulations are to be promulgated pursuant to R.I. Gen. Laws Chapters 42-17.1, 46-5, and 46-22, R.I. Gen. Laws Sections 32-2-4 and 42-17.10-1, in accordance with R.I. Gen. Laws Chapter 42-35, the *Administrative Procedures Act*.

Other Agencies Affected: None

Other Regulations That May Duplicate or Conflict with the Regulation: None

Describe the Scope and Objectives of the Regulation: To assist in the preservation and expansion of the Rhode Island commercial fishing industry.

What was the rationale for establishing this regulation? These regulations ensure that there is a means by which commercial fishing businesses in Rhode Island have adequate berthing and shore side support to carry out their day to day business. (This particularly important given limited private alternatives in Rhode Island.)

Does the rationale still exist? Yes

Is the rationale still relevant? Yes

Business Industry(ies) Affected by the Regulation: Rhode Island's commercial fishermen

Types of Businesses Included in the Industry(ies): Rhode Island's commercial fishermen, small business designations NAICS #114112 and #114111.

Total Number of Small Businesses Included in the Regulated Industry(ies)

Estimated at 400 (based upon the average number of commercial fishers utilizing state dockage facilities and the licensed dealers to whom these fishers sell their catch).

Number of Small Businesses Potentially Subject to the Proposed Regulation: Same as above.

How often do small businesses contact your agency for assistance with clarification of the regulation and/or receive assistance with compliance issues? Rarely

What is the cost to your agency of establishing and enforcing this regulation? The total FY 2013 Budget for the RIDEM Division of Coastal resources is \$504, 848.00.

What would the consequences be if the regulation did not exist? Without these regulations there would be adverse impact on RI's struggling commercial fishing industry.

Effective Date Used In Cost Estimate: February 2014

For each question below, please answer “yes” or “no” and offer a brief explanation.

Please describe any facts, data, views, arguments, or other input from small businesses, organizations or any other sources that were used to quantify the impacts outlined below.

	Yes	No	<i>*Note: For each question, please answer “yes” or “no” and offer a brief explanation. Please describe any facts, data, views, arguments, or other input from small businesses, organizations or any other sources that were used to quantify the impacts outlined below.</i>
1.	Yes	No X	Do small businesses have to create, file, or issue additional reports? No. These proposed regulations govern port operations at the state facilities located at the ports of Galilee and Newport and do not create the need for any additional reports.
2.	Yes	No X	Do small businesses have to implement additional recordkeeping procedures? No. These proposed regulations govern port operations at the state facilities located at the ports of Galilee and Newport and do not require any supplemental record keeping.
3.	Yes	No X	Do small businesses have to provide additional administrative oversight? No. These proposed regulations do not require additional oversight or

			administrative burden on businesses that they govern.
4.	Yes	No X	Do small businesses have to hire additional employees in order to comply with the proposed regulation? No. These proposed regulations are in place to assist in port operations and organization at the state facilities located at the ports of Galilee and Newport and do not require the hiring of additional employees to comply with them.
5.	Yes	No X	Does compliance with the regulation require small businesses to hire other professionals (e.g. a lawyer, accountant, engineer, etc.)? No. These regulations do not require small businesses to hire other professionals.
6.	Yes	No X	Does the regulation require small businesses to purchase a product or make any other capital investments in order to comply with the regulation? No. These proposed regulations will not require any capital investments to comply with these regulations.
7.	Yes	No X	Are performance standards more appropriate than design standards? No. This question is not applicable to this type of regulatory action.
8.	Yes	No X	Does the regulation require small businesses to cooperate with audits, inspections, or other regulatory enforcement activities? No. There are no audits or inspections required by these proposed regulations.
9.	Yes	No X	Does the regulation have the effect of creating additional taxes and/or fees for small businesses? No. The only fee that is detailed in these regulations is a nominal and reasonable berthing fee consistent with fees required to berth in similar facilities in surrounding states. The attractiveness of these rates is reflected in the extensive waiting lists for entry into this facility currently on file.
10.	Yes	No X	Does the regulation require small businesses to provide educational services to keep up to date with regulatory requirements? No. There is no education or training required by these proposed regulations.
11.	Yes	No	Is the regulation likely to <i>deter</i> the formation of small businesses in Rhode Island?

		X	No. These proposed regulations not only entice small businesses to form in the State but the utilization of this facility also supports established small businesses.
12.	Yes X	No	Is the regulation likely to <i>encourage</i> the formation of small businesses in Rhode Island? See response to Question #11 above.
13.	Yes	No X	Can the regulation provide for less stringent compliance or reporting requirements for small businesses? No. In fact, no reporting requirements are to be established pursuant to these proposed regulations.
14.	Yes	No X	Can the regulation establish less stringent schedules or deadlines for compliance or reporting requirements for small businesses? No. There are no deadlines and the only schedules detailed are quarterly payments of berthing fees and the annual renewal of berthing contracts.
15.	Yes	No X	Can the compliance or reporting requirements be consolidated or simplified for small businesses? No reporting requirements are detailed in these proposed regulations.
16.	Yes	No X	Can performance standards for small businesses replace design or operational standards? No. This question is not applicable to this type of regulatory action.
17.	Yes	No X	Are there alternative regulatory methods that would minimize the adverse impact on small businesses? These proposed regulations support small businesses as opposed to causing an adverse impact on small businesses.
18.	Yes X	No	Were any small businesses or small business organizations contacted during the preparation of this document? If so, please describe. Although no organizations were contacted in the preparation of this document, all interested parties will be afforded the opportunity to engage with the Department during a scheduled workshop and comment upon the proposed regulations in accordance with Chapter 42-35 of the Rhode Island General Laws, the <i>Administrative Procedures Act</i> .