



RHODE ISLAND
DEPARTMENT OF ENVIRONMENTAL
MANAGEMENT

235 Promenade Street, Providence, RI 02908-5767 TDD 711

To: Mark Gibson
Acting Chief, Fish and Wildlife

From: W. Michael Sullivan
Director

A handwritten signature in black ink that reads "W. Michael Sullivan".

Date: November 21, 2008

Re: Decision on Shellfish Management Area Regulatory Proposals

I am writing in response to your November 13, 2008 memorandum regarding three proposed changes to the regulations governing shellfish management areas. I understand that these proposals were vetted through the Marine Fisheries Council's Shellfish Advisory Panel, and discussed at the Council's November 3, 2008 meeting. I further understand that no public hearing was held on these issues, since none is required for changes to shellfish area regulations.

I have reviewed the minutes of the October 16, 2008 Shellfish Advisory Panel meeting and the November 3, 2008 meeting of the full Council. I note that there was no objection to any of the proposals at the Council meeting, and that the Council voted unanimously to support adoption of all three proposals. I further note that you, on behalf of your staff, also recommend adoption of all three proposals.

Based on my review, I have decided to adopt two of the three proposals, with some minor edits and clarifying comments. I find that the third proposal needs some more work before I can sign off on it.

1. December 2008 Harvest Schedule Adjustments for Four Management Areas

For the Bristol Harbor, Bissel Cove-Fox Island, Potowomut A, and High Banks Shellfish Management Areas, add to the current boat harvesting provisions the following new provision:

“Provided, however, that for the period of December 22 to December 26, 2008: shellfishing from a boat will be permitted only between 8:00 A.M. and NOON on Monday, December 22, Tuesday, December 23, and Friday, December 26 (closed Wednesday, December 24 and Thursday, December 25). And for the period of December 29, 2008 to January 2, 2009: shellfishing from a boat will be permitted only between 8:00 A.M. and NOON on Monday, December 29, Tuesday, December 30, and Friday, January 2 (closed Wednesday, December 31 and Thursday, January 1).”

The rationale for this change appears to have been mis-stated in your memo. The correct rationale, as I understand it, is to afford fishers two advance days (i.e., two Tuesdays) to harvest product and get it to dealers with enough lead time, prior to the two Thursday holidays; and to afford dealers the opportunity to move that product to consumers on the two Wednesdays immediately preceding the two Thursday holidays.

2. Partial 2009 Winter Harvest Schedule for Greenwich Bay Management Area

For the Greenwich Bay Shellfish Management Area, add to the boat harvesting provisions the following new provision:

“For the period of February 1, 2009 to February 28, 2009: shellfishing from a boat will be permitted only one day per week – on the first available Monday, Tuesday, Wednesday, Thursday, or Friday, based on water quality conditions – between 8:00 A.M. and 11:00 A.M.”

I note that the Greenwich Bay Management Area remains seasonally closed during all of December (2008) and January (2009), and that the new provision will address the allowable harvesting activity when the area opens on February 1, 2009, or if temporarily closed as of that date due to water quality conditions, on the first open weekday in February thereafter. As stated in your memo, the rationale for this modified February schedule is to maintain product value, minimize market saturation, and aid enforcement. I recognize that the schedule for the area for the period of March 1 to April 30, 2009 remains pending, and will be considered at the next meeting of the Council.

3. Harvesting of Bay Scallops in Spawner Sanctuaries

Conceptually, I support the enactment of a regulation that would prohibit the use of bay scallop dredges in shellfish spawner sanctuaries. The rationale for this new provision, as I understand it, is to help protect newly established eelgrass beds and planted oysters, both of which are vulnerable to damage and loss caused by bay scallop dredges.

The concern I have is that while Part IV of the regulations identifies several areas that are closed to shellfishing, those areas are not classified as shellfish spawner sanctuaries. Indeed, as far as I know, the term “shellfish spawner sanctuary” is not set forth anywhere in current regulation. I therefore ask that you work with your staff to develop proposed

regulatory language that first identifies and characterizes all areas that are considered shellfish sanctuaries, and then applies to all of them the following new provision:

“Bay scallops may only be harvested in these areas by dip net; the use of bay scallop dredges in these areas is prohibited.”

If, upon review by legal counsel, the proposed language is deemed consistent with the proposal that went through the Council, I will enact it. If, on the other hand, legal counsel advises that the draft language is substantively new or different than that which went through the Council, I will ask that it be brought back to the Council for a second review.

Thank you.