



RHODE ISLAND  
DEPARTMENT OF ENVIRONMENTAL  
MANAGEMENT

235 Promenade Street, Providence, RI 02908-5767

TDD 401-222-4462

TO: Mark Gibson, Acting Chief DFW  
FROM: W. Michael Sullivan, Director DEM

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

DATE: January 26, 2009

SUBJECT: Request for decisions on Industry-proposed changes for High Banks  
Shellfish Management Area

I am writing in response to your January 15, 2009 memo regarding the proposed change to the harvesting schedule for the High Banks shellfish management area. Based on your memo, I note the following with regard to the travel of this issue:

The current regulation governing High Banks allows for boat harvesting from the second Wednesday of December until April 30 between 8 A.M. and NOON on Mondays, Wednesdays, and Fridays. (Existing holiday adjustments found in current regulation temporarily excluded for clarity.)

On October 16, 2008, the Shellfish Advisory Panel (SAP) voted to recommend the following Industry-proposed language to the RI Marine Fisheries Council (RIMFC):

*Beginning February 1, 2009; Shellfishing in High Banks Management Area will be permitted Sunday through Saturday (7 days per week) from sunrise to sunset (3 bushel limit) until April 30, 2009.*

On December 1, 2008, the matter was taken up by the full Council. The Council voted unanimously to recommend adoption of a modified version of the proposal, namely an expansion of harvest time to *5 days per week (Monday through Friday) from sunrise to sunset until April 30, 2009.*

As reflected in your January 15 memo, the Division of Fish and Wildlife staff opposed both the SAP and Council recommendations. The primary reasons for the opposition include the dramatic expansion of effort which *might* result from the proposed changes. Via a simple linear analysis the current regulation for the period (Feb. 1 to April 30)

would allow 38 fishing days and a total of 152 effort hours. The Council-recommended change would increase the number of fishing days to 64 and a total of approximately 768 effort hours for the same period.

In the Council meeting minutes, Chief Hall from the Division of Law Enforcement noted the difficulty his staff would have with trying to monitor compliance with daily possession limits if the Council recommendations were implemented.

I share the concerns expressed by staff over the large increase in available fishing time (768 hours vs. 152). At first review it would appear to be excessive and contrary to the intent of a spawner management area that receives transplants. However I do not see a comprehensive shellfish management program and an essential biological assessment that warrants continuing current minimal effort. Nor do I have data that substantiates the industry requested 5-fold increase in effort opportunity.

The industry request suggests their requested change promotes price stability and flow of product to the market. I cannot reach their same conclusion and do not have any testimony or research which I can draw that their conclusion would be an acceptable suggestion.

Under the current challenges to DEM and all State assets, I know enforcement will have a difficult time deploying details to police such a fishery as proposed by industry and accepted by either the SAP or the Council.

It is my decision to expand the effort opportunity given the data I have been led to exist, the testimony of harvesters and comments of DEM staff on resource capacity. Therefore, effective today my decision is to increase effort opportunity by increasing the daily harvest window from 4 hours/day three days/week to 4+ hours/day five days/week. This is to be accomplished by allowing the area to open Monday through Friday from sunrise to 12 Noon through April 30. This represents a 50+% increase in harvest opportunity and would not expand the challenge of DEM Enforcement to deploy staff additional days of the week. **Thus please amend section 4.28.3 of the shellfishing regulations in Part IV to read as follows:**

*Beginning on the second Wednesday of December shellfishing will be permitted only between sunrise and NOON on Monday through Friday of every week until April 30, annually. [And retain all remaining, existing language in the section relating to holiday adjustments.]*

I would challenge the staff and the fishers to collaborate on a framework for linking biomass and harvest effort so that we might attempt to link future changes to resource mass in a measurable manner. We can evaluate next year hopefully within the framework of a comprehensive multi-party shellfish plan.

My understanding is that no public hearing is required prior to changes in shellfish management area regulations, thus the Council minutes constitute the only record of

public comment. The regulation filing process will be initiated upon receipt of this decision.