



RHODE ISLAND
DEPARTMENT OF ENVIRONMENTAL MANAGEMENT

OFFICE OF THE DIRECTOR
235 Promenade Street, Room 425
Providence, Rhode Island 02908

To: Jason McNamee
Chief, Marine Resource Management

From: Janet Coit
Director

Date: October 28, 2015

Re: Final Decisions Pertaining to September 21, 2015 Marine Fisheries Public Hearing Items; Winter Harvest Schedule for Shellfish Management Areas; and Oyster Moratorium in Bissel Cove/Fox Island Shellfish Management Area

I have received and reviewed your memo to me, dated October 20, 2015 and attached herewith, regarding (1) the five public hearing items from the September 21, 2015 public hearing; (2) the proposed 2016 winter harvest schedule for the Shellfish Management Areas; and (3) the proposed extension of the oyster moratorium in the Bissel Cove/Fox Island Shellfish Management Area. With that memo, I have also received and reviewed all relevant supporting documentation, including the September 21, 2015 public hearing document and public hearing comments.

With one exception, I hereby approve all of the recommendations set forth in your memo, all of which are consistent with the recommendations of the RI Marine Fisheries Council, rendered at their October 5, 2015 meeting.

The one exception is item c under public hearing item #1: proposed changes to section 6.7-8(b) of the Commercial and Recreational Saltwater Fishing Licensing Regulations – *Issuance of New Licenses upon Sale of Vessel and Gear*. I recognize that the proposed changes are intended to clarify an ambiguity identified in a recent decision from the Department's Administrative Adjudication Division. I further recognize that while the Council voted to recommend adoption of the proposed changes, the Council was focused, appropriately, on addressing the principles at issue, and did not take a strong stand on the exact nature of the proposed regulatory language. I further note that there was opposition to the proposal offered at both the public hearing and the July 9, 2015 meeting of the

Council's Industry Advisory Committee. Finally, in your memo to me, you note that while you are conceptually in support of the proposed change, you are also aware of the potential need to further address the proposed regulatory language, to ensure that it achieves its intended purpose and can be applied in a fair and reasonable way.

In view of the above-noted factors, and having discussed this matter with you and other DEM staff, I hereby decide to remand this matter back to you so you and staff can work on refining the proposed language, in consideration of comments offered by the public and the Council, and consistent with the purpose and intent of relevant statutory provisions. Once you have completed that exercise, please consult with the Office of Legal Services to determine whether the refined language can be considered for adoption without going back out to public notice, or whether there will be a need to re-notice. If the former, please resubmit to me with a new cover memo. If the latter, please re-notice at the next available opportunity.

Thank you.



RHODE ISLAND
DEPARTMENT OF ENVIRONMENTAL MANAGEMENT
DIVISION OF FISH & WILDLIFE / MARINE FISHERIES
Three Fort Wetherill Road
Jamestown, Rhode Island 02835

TO: Janet Coit, Director

FROM: Jason McNamee, Chief

DATE: October 20, 2015

SUBJECT: Request for decision regarding proposed amendments to the RI Marine Fisheries regulations that were the subject of a public hearing conducted on September 21st and the RI Marine Fisheries Council at their October 5th meeting.

Below is a summary of each of the items and Marine Fisheries recommendation for each item.

1. **Hearing item #1: Proposed amendments to “RIMFR - Commercial and Recreational Saltwater Fishing Licensing Regulations”:**
 - a. **Exit/entry ratios for quahaug and soft-shell clam endorsement:**
 - **Background:**
 - Annually review exit/entry ratios: Proposed changes to the exit/entry ratios Quahaug and Soft-shell clam endorsements originated from IAC meeting on July 21.
 - **Option 1/Marine Fisheries proposal:**
 - **Quahaug:** Amend from 2:1 to 1:1. Marine Fisheries in support of IAC recommendation – we do not anticipate significant increases in participation or effort (32 eligible licenses not renewed = 32 quahaug endorsements available).
 - **SS Clams:** Maintain 5:1 (status quo). **Marine Fisheries does not support IAC recommendation for SS Clam due to poor stock status (landings down 94%).**
 - **Option 2/IAC proposal:**
 - **Quahaug:** Amend from 2:1 to 1:1.
 - **SS Clams:** Amend from 5:1 to 1:1. The IAC did not have a good sense of whether this fishery needed to be constrained to this degree, therefore they sided with allowing more entry. The sentiment was that there would be continued attrition due to lack of resource.
 - **Public comments:** None
 - **Council:** Unanimous vote in support of Option 1.
 - **Marine Fisheries:**
 - Marine Fisheries concurs with the IAC with regard to the quahog endorsement; this change will likely maintain effort at current levels or could conceivably be less in 2016 depending on how many licenses are retired. It is important to keep in

mind that the new licenses issued are at the CFL level and associated basic (lower) harvest level, so the compounding of the new endorsements being at lower harvest levels and the current attrition trajectory in the fishery make this change a low risk.

- With regard to soft shelled clams, Marine Fisheries believes that the resource is in such poor status that it would not be wise to allow any effort increase, and in fact effort should be decreased from its current levels. This will be re-evaluated if stock status changes for soft shelled clams.

b. Procedures for adopting Sector Management Plan:

- Background: Proposal resulting from recently passed LEAN legislation; plans are no longer required to be filed as regulation
- Public comments: None
- Marine Fisheries: Support as proposed.
- Council: Unanimous vote of support as proposed.

c. Issuance of new licenses upon sale of vessel and gear:

- Background: Language originated from Margaret McGrath in the Licensing office. Language meant to clarify the requirement for sale of a business, in that the sale must involve only the vessel that was involved in fishing activity, and that if the vessel changes, at least half of the fishing activity must be attributable to vessel involved in the sale; is also meant to avoid future appeal procedures that are routinely granted.
- IAC: Opposed. Opposed to any provision which attaches fishing activity to a vessel rather than a person.
- Public comments: 2 oral comments in opposition.
- Marine Fisheries: Marine Fisheries supports the concept of clarifying the regulation with regard to this provision, however, based on the comments made at the IAC and public hearing, Marine Fisheries believes it is important to make sure that individuals with hardships (poor health, damaged vessel) are accounted for in this regulation. We believe it is important to make sure individuals are not gaming the system and creating large degrees of increased effort, however we also do not want to put such an onerous constraint on this transaction that individuals with legitimate extenuating circumstances are forced in to continuing to fish or prohibited from making the transaction all together. It will be important to confirm that this flexibility exists with legal counsel and if it does not, we believe we need to construct the language in such a way as to allow for this flexibility.
- RIMFC: Unanimous vote of support as proposed.

d. Date for submittal of Student Shellfish licenses (sections 5, 6.7-3, and 6.8-5):

- Background: Proposal is meant to sync regulations with recently passed legislation.
- IAC: Not addressed.
- Public comments: None.
- Marine Fisheries: Support as proposed.
- Council: Unanimous vote of support as proposed.

2. **Hearing Item #2: Proposed amendments to “RIMFR - Aquaculture Marine Species in Rhode Island Waters”:**

- **Background:** Proposed amendments resulting from the Shellfish Management Plan to clarify and update roles of DEM and CRMC regarding aquaculture application review and permitting. Other clarification edits consistent with regulatory re-write initiative. Regulations thoroughly vetted by industry.

a. **Proposed definitions:**

- **Public comments:** 2 oral comments to remove “human consumption” from definition of “harvest”. 1 oral comment to remove “DOH” and “DEM” from the definition of “operational plan”.
- **Marine Fisheries:** In support of the oral comments provided. Revised final language provide below:
- **Council:** Unanimous vote of support including proposed revision.

“Harvest” means the act of removing shellstock ~~for the purpose of human consumption from the waters of growing areas~~ **with the intention of not returning to the water after husbandry practices**. ~~Harvest includes placement of shellfish that has been removed for the purpose of human consumption on or in a manmade conveyance, or other means of transport.~~ Harvest commences when the first shellfish ~~intended for human consumption~~ **not returned to the water** is removed from the water on any given day, or is exposed by the receding tide.

- Regarding the oral comment about the definition of "Operational plan", Marine Fisheries supports the deletion of “DOH” but not “DEM”, as DOH does not approve such plans, but DEM does via the license application process, and offered the following revision which was presented at the Council meeting:

"Operational plan" means a written plan filed with CRMC and, approved by DEM ~~and DOH~~ prior to its implementation....

b. **Clarifying and updating permitting and submission requirements (new section 8.0):**

- **Public comments:** No comments.
- **Marine Fisheries:** Support as proposed.
- **Council:** Unanimous vote of support as proposed.

c. **Clarifying submission requirements for the shipment and importation of shellfish seed (new section 9.2):**

- **Public comments:**
 - In section 9.2.1, 1 comment to allow for email as acceptable notification to CRMC.
 - In section 9.7, 1 comment to remove the word “any” as lacks clarity.

- Marine Fisheries: Support as proposed including revised changes as shown below. Revised final language provide below:
- Council: Unanimous vote of support including proposed revision.

9.2.1 All persons wishing to import shellfish seed must submit a written request **or email** to the Aquaculture Coordinator of CRMC at least five working days prior to entry into the state. Such request to be mailed to Coastal Resources Management Council, Stedman Government Center, Suite 3, 4808 Tower Hill Road, Wakefield, RI 02879.

9.7 6-6.8 Transfer of seed from other than approved waters: Shellfish seed cultured in other than approved waters **may in accordance with a CRMC permit must** be transferred by the aquaculturist to an approved aquaculture lease in approved waters in accordance with ~~the terms of the~~ **an approved assent, license, and** operational plan, ~~with DEM Division of Fish and Wildlife and Division of Law Enforcement notification~~ **prior to the shellfish exceeding the seed size limit**. If more than 10 percent of the cultured shellfish within a lot or batch exceed the ~~definition of~~ **seed size limit (in the case of quahaugs, if any exceed 20 mm; and in the case of oysters, if any exceed 32 mm)**, they shall not be moved from other than approved waters to an approved growing area without prior permission of the DEM Director and the DOH.

d. **Reduce the time period requirement for the harvest of shellfish transferred from other than approved waters as seed (new section 9.8):**

- Public comments: 1 comment to allow for changes at the ISSC level to be automatically incorporated into DEM regulations without hearing or notice.
- Legal: Cannot accommodate this public comment recommendation as this practice is statutorily prohibited.
- Marine Fisheries: Support as proposed. Delete ~~“(in the case of quahaugs, if any exceed 20 mm; and in the case of oysters, if any exceed 32 mm)”~~ as duplication of definition.
- Council: Unanimous vote of support as proposed.

e. **Updating tagging requirements (new section 11.1):**

- Public comments: None.
- Marine Fisheries: Support as proposed.
- Council: Unanimous vote of support as proposed.

f. **General editing to improved readability (entire regulation):**

- Public comments: 1 comment regarding proposed section 12.0 Temperature Control of Shellfish: Replace “oyster” with “shellfish”.
- Marine Fisheries: Changing to “shellfish” is overly broad in terms of aquaculture; appropriate to change to “oysters and quahaugs”. Revised final language provide below:
- Council: Unanimous vote of support including proposed revision.

12. Temperature Control of Shellfish:

12.2 Harvest of oysters **and quahaugs** annually from September 15 through June 30 inclusive: The maximum allowable time between the harvest of shell stock and delivery to a dealer shall be twelve hours. Possession of shell stock by anyone other than a licensed dealer in excess of twelve (12) hours is prohibited. This maximum allowable time may be reduced by DEM, via emergency regulation, in certain harvest areas if environmental changes necessitate such adjustment.

12.3 Harvest of Oysters **and quahaugs** ~~outside of designated Temperature Control or Thermally Impacted areas~~ annually from July 1 through September 14 inclusive:

12.3.1 All oysters **and quahaugs** harvested shall be transferred to a licensed dealer within five (5) hours of the commencement of harvest

12.3.2 All harvested oysters **and quahaugs** shall be subject to shading immediately upon harvest.

2.3.3 All oysters **and quahaugs** that are removed from the water for less than twelve (12) hours for husbandry purposes must be re-submerged for no less than forty-eight (48) hours before harvest.

12.3.4 All oysters **and quahaugs** that are removed from the water for twelve (12) hours or greater for husbandry purposes must be re-submerged for no less than seven days (168 hours) before harvest.

12.3.5 All oysters **and quahaugs** that are exposed to air drying must be re-submerged for no less than seven days (168 hours) before harvest.

12.3.6 ~~In addition to the requirements of Rule 6.9.4 above,~~ All oysters **and quahaugs** harvested from a Designated Temperature Control or Thermally Impacted area shall **also** be harvested in compliance with one of the following requirements:

(A) Harvesters shall terminate all harvest activities and all harvested oysters **and quahaugs** must be transferred to a dealer or placed in mechanical refrigeration or adequately iced by 11:00 a.m. between the dates of July 1st and August 31st, inclusive; and by noon between September 1 and September 14th, inclusive. **Upon being placed in mechanical refrigeration or adequately iced,** oysters **and quahaugs** must remain under temperature control ~~or adequately iced~~ until transferred to a licensed dealer.

(B) Oysters **and quahaugs** that are harvested after the times specified in ~~Rule 6.9.5.1.1~~ **this section** must be delivered to a licensed dealer within two (2) hours of the commencement of harvest; or placed in mechanical refrigeration or adequately iced within two (2) hours of the commencement of harvest until the oysters **and quahaugs** are transferred to a licensed dealer.

3. **Hearing item #3: Proposed repeal of “RIMFR – Marine Fisheries Council”:**

- Background: Resulting from LEAN legislation.
- Public comments: None.

- Marine Fisheries: Support as proposed.
 - Council: Unanimous vote of support as proposed.
4. **Hearing item #4: Proposed repeal of 2015 Finfish, Shellfish, and Crustacean Sector Management Plans:**
- Background: Resulting from LEAN legislation.
 - Public comments: None.
 - Marine Fisheries: Support as proposed.
 - Council: Unanimous vote of support as proposed.
5. **Hearing item #5: Proposed amendments to RIMFR – Lobster, Crabs, and Other Crustaceans” to correct the minimum escape vent size and season closure dates for LCMA 4 for compliance with ASMFC:**
- Background: Current regulations are inconsistent with ASMFC fishery management plan.
 - Public comments: 1 comment opposed to any closed season
 - Marine Fisheries: Support as proposed - ASMFC compliance.
 - Council: Unanimous vote of support as proposed.
6. **Winter Harvest Schedules in Shellfish Management Areas:**
- Background: Annual Council review of schedules. This year included a close examination of depletion in the areas under consideration, but the troubling signals from previous years have lessened, so no reduction in access is proposed at this time.
 - SAP: Proposed schedule originating from and approved by SAP.
 - Public comments (Council meeting): None
 - Marine Fisheries: Support as proposed.
 - Council: Unanimous vote of support as proposed.
7. **Extension of the Bissel Cove/Fox Island Shellfish Mgmt. Area oyster moratorium:**
- Background: Marine Fisheries proposal to extend moratorium for an additional 5 years to support restoration efforts. Data indicates good recruitment and survival but low overall biomass, would therefore not support sustainable harvest if opened.
 - SAP: Support as proposed.
 - Public comments (Council meeting): None
 - Marine Fisheries: Support as proposed.
 - Council: Unanimous vote of support as proposed.