



Rhode Island
Department of Environmental Management

DIVISION OF FISH AND WILDLIFE

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TO: Janet L. Coit, Director DEM
FROM: Mark Gibson, Deputy Chief of Marine Fisheries
DATE: October 10, 2012

SUBJECT: Request for Decisions Pertaining to the following September 12, 2012 Marine Fisheries Public Hearing Items:

- Commercial licensing items, including the three sector management plans;
- Amendment to the definitions for; “Actively Fished”, “Family Member”, and Licensed Captain”;
- A provision to allow non-expiration of commercial fishing licenses for Active Duty Military;
- Create a new licensing endorsement for Research Set Aside (RSA)
- Implementation of RI Recreational Saltwater Fishing License Regulations
- Implementation of Vessel-Based Regulations

These items were the subject of a public hearing held on September 12, 2012, and subsequent consideration by the RI Marine Fisheries Council at their October 1, 2012 meeting. Supporting documentation submitted along with this memorandum include the minutes of the RIMFC Industry Advisory Committee meeting, the public hearing annotated documents, summary of public hearing comments, and the minutes from the RIMFC October 1, 2012 meeting.

Having reviewed the entire record, and conferred with staff, I hereby urge adoption of the proposed changes as noted below. If you concur, please indicate by signing this memo at the end and returning it to me. Upon receipt of the signed memo, I will initiate the filing process. If you wish to make any changes that differ from those proposed, please delineate those changes via a separate memo.

Proposed changes to shellfish, finfish, and crustacean sector management plans:

These management plans are required to be updated annually, per RIGL 20-2.1-9(5), in association with modifications to the licensing regulations. There are no significant changes being proposed in the plans this year; rather, the modifications are in the form of updates to our existing management programs, which are consistent with the associated proposed changes to the licensing regulations.

There were no comments offered at the public hearing on the three management plans. At the October 1, 2012, RIMFC meeting, the Council recommended adoption of the finfish, shellfish, and crustacean sector management plans

I agree with the Council and recommend adoption of the finfish, shellfish, and crustacean sector management plans.

Proposed amendments to the “Commercial Fishing Licensing Regulations”:

Shellfish. With regard to ***quahogs***, the status quo allows for one new license/endorsement to be issued for every two eligible licenses (MPL’s, and PEL’s with a quahog endorsement) that retired (i.e., 2:1 exit/entry ratio). Under that scenario, twenty three (23) new Commercial Fishing Licenses (CFLs) with a quahog endorsement would be made available for 2013. The RIMFC Industry Advisory Committee (IAC) supported the status quo proposal. There were no comments made at the public hearing on this item. At the Council meeting, the Council recommended to remain with the status quo (2:1 exit/entry ratio) for the quahog fishery. A representative from the RI Shellfishermen’s Association stated they supported status quo for the quahog fishery.

The Division supports the Council recommendation by noting that the number of participants in the fishery has become less relevant from a resource management perspective. The Division therefore agreed with the Council recommendation for status quo (2:1 exit/entry ratio).

As supported by the Council, and the Division, I urge status quo (2:1 exit/entry ratio) for the quahog fishery. Twenty three (23) new Commercial Fishing Licenses (CFLs) with a quahog endorsement would be made available for 2013.

With regard to ***soft-shell clams***, the status quo allows for one new license/endorsement to be issued for every five eligible licenses (MPL’s, + PELs w/SS + CFLs with a soft-shell clam endorsement) that retired (i.e., 5:1 exit/entry ratio). Under that scenario, eleven (11) new Commercial Fishing Licenses (CFLs) with a soft-shell clam endorsement would be made available for 2013. The RIMFC - IAC recommended status, a 5:1 exit/entry ratio. At the public hearing there were no comments made on this item. The Division responded that it could not support a 5:1 exit/entry ratio without recovery from the stock depletion event at Conimicut Point. Despite the dramatic reductions in abundance the Conimicut Point area attracted new fishing effort for about 593 licensed fishermen holding a soft-shell clam endorsement and 700 Multi-purpose licenses, which is beyond the level of sustainability. Preliminary depletion model results suggest that the population is declining from 2006 to present with recruitment failing to replace fishery removals. Results at this point suggest that the recent increase in minimum size will not by itself stop overfishing and catch limits may need to be reduced to bring fishing mortality rate into balance with resource productivity. At some point the Division would like to establish allowable catches by area then the number of licenses would become irrelevant, however we are not at that point. The Division has no alternative but to recommend no new soft-shell clam endorsements for 2013. At the Council meeting, the Council voted in favor to remain with the status quo (i.e., 5:1 exit/entry ratio) for the soft-shell clam fishery.

Although the Council recommended the status quo to apply the 5:1 exit/entry ratio, I urge no new soft-shell clam endorsements for 2013 based upon the points made above particularly fishing effort already being beyond the level of sustainability for this fishery.

— See my attached memo endorsing MEC approach. JC

With regard to ***whelk***, a whelk endorsement was created in 2012, which was supported by industry. In 2012 both the Division and industry were in agreement that an endorsement should be created with the same restrictions associated with the full harvest and gear level for whelk.

For 2013, the IAC supported a recommendation from industry for no new whelk endorsements, except, to allow valid commercial fishing license (CFL) or principal effort license (PEL) holders with a quahaug and/or a soft-shell clam endorsement as of the immediately preceding year (2012) to obtain a whelk endorsement in 2013. There were no comments made at the public hearing on this item. The Division noted in 2011, although the average whelk landings per fisher decreased, there was an increase in the number of active fishers, which in turn increased total landings to its highest levels. The fishery seems to have operated in a pulse fishing mode with periodic increases in abundance that attracted fishing effort. High fishing mortality rates ensued (1960's, 1980's), the stock declined, effort dissipated, and a biomass recovery followed. A minimum size limit alone cannot prevent reoccurrence of these fishing pulses. To avoid opportunistic expansions in effort, consideration will need to be given to effort limitation via license/permitting or through output controls such as catch limits and quotas, therefore, the Division offered an option recommending no new whelk endorsements for 2013.

At the Council meeting, the Council voted in favor to recommend no new whelk endorsements, except to allow those "actively fishing" commercial fishing license (CFL) or principal effort license (PEL) holders with a quahaug and/or a soft-shell clam endorsement as of the immediately preceding year (2012) to obtain a whelk endorsement in 2013. (Note: "Active Fishing" meaning fished at least 75 days in the preceding two calendar years).

Although the Council supported the soft-shell clam limited entry proposal from industry with entry restricted to "actively fishing" license holders only, I recommend no new whelk endorsements of any kind for 2013, so as to protect the whelk fishery from further expansion in effort at this time.

— See my attached memo endorsing MFC. JC

Restricted finfish. For the 2012 licensing year the Division recommended modifying the (5:1 exit/entry ratio) standard to a new standard of a 1:1 exit/entry ratio for restricted finfish. For 2013, the IAC supported status quo, remaining with the 1:1 exit/entry ratio for restricted finfish. Rhode Island state fishery law provides for a balancing of conservation and priority for existing industry with opportunities for new participants. Therefore, the Division recommends maintaining the current standard (1:1 exit/entry ratio) for restricted finfish in 2013. This would provide for 6 new PELs with restricted finfish endorsements to be made available, given that 6 with activity were retired. There were no comments made at the public hearing on this item. The Council voted unanimously to recommend status quo of the current standard, a 1:1 exit/entry ratio for 2013.

As supported by the Council and the Division, I urge status quo, a 1:1 exit/entry ratio for the restricted finfish fishery. Based on the number of applicable licenses that retired in 2012, six (6) new PEL licenses/endorsements with RFF would be made available for 2013.

Lobsters. With regard to lobsters, the Council voted to recommend status quo, no new lobster endorsements, which was also recommended by the IAC. There were no comments made at the public hearing on this item. The Southern New England (SNE) lobster fishery is at low abundance and facing significant management restrictions at the ASMFC level. Addendum XVIII is under implementation and will lead to further cuts in tap allocations. The current

Fishery Management Plan (FMP) does not provide for any new participants. Given that, the Division recommended no new lobster endorsements for 2013.

As supported by the Council, and the Division, I urge adoption of the status quo with regard to lobster licensing - no new lobster endorsements for 2013.

Amendments to the definitions for: “Actively Fished” (sections 5.1 and 6.7-11): The changes proposed by the Department for “Actively Fished” sections (5.1 and 6.7-11) merely clarify the regulations to allow for multiple day trips to count as multiple days in relation to the “actively fished” standard, with a reliance on VTRs and/or State logbooks to verify. Two options were offered for public comment; (Vessel Trip Reports (VTR) or Vessel Trip Reports (VTR) and/or State Logbooks). At the public hearing there were no comments made on this item. At the Council meeting the Council struggled with this item but determined they should recommend adoption of (option #1) as an amendment to the definition for “Actively Fishing” which would state , “Additionally, actively fished days may be demonstrated via [Option 1] one or more Vessel Trip Reports, which specifically reference the license holder’s name and license number, and correspond to dated transaction records, as 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.” Along with this suggested amendment the Council request that the Division look into modifying state logbooks to allow state water fishermen the ability to claim multiple day trips via the state logbook. They also recommended including a definition for the term “day” to mean any 24-hour period or part thereof.

I urge adoption of the federal VTR option #1 as supported by the Council with the inclusion of the definition for “day”. As requested by Council, the Division will consider modifying state logbook to allow state water fishermen the ability to claim multiple day trips. A state logbook option may not be available for 2013 depending on the logistics of logbook re-design and procurement and ACCSP data standards.

Amendments to the definitions for: “Family Member” (section 5.27), and Licensed Captain (section 5.43): The changes proposed by the Department for “Family Member” and “Licensed Captain” merely clarify the regulations. At the public hearing there were no comments made on these items. At the Council meeting the Council recommended adoption of both amended definitions; “Family Member” and “Licensed Captain”.

As supported by the Council, I urge adoption of the amended definitions for both “Family Member” and “Licensed Captain.”

Provision to allow non-expiration of commercial fishing licenses for Active Duty Military (section 6.7-4(j)): The Department put forward this provision in order to add language to the licensing regulations to accommodate future requests of Active Duty Military. The members of the RIMFC - IAC had no objections to adding the provision. There were no comments made at the public hearing on this item. The Council voted in support of the provision and recommended the proposed language be added to the licensing regulations.

As supported by the Council, I urge adoption of the provision to allow non-expiration of commercial fishing licenses for Active Duty Military.

Proposal to create a Research Set Aside (RSA) Endorsement: The RSA endorsement would allow a holder to land marine species, for sale, in Rhode Island, in accordance with RSA quota obtained from the National Marine Fisheries Service, and allow the Department to collect an annual fee for the endorsement. There were no comments made at the public hearing on this item. At the Council meeting the Council recommended to create a Research Set Aside endorsement.

As supported by the Council, and the Division, I urge adoption of a Research Set Aside (RSA) endorsement for 2013.

Proposed Regulations Implementing the RI Recreational Saltwater Fishing License:

The Department presented general provisions and exemptions pertaining to the Recreational Saltwater Fishing License. There were no comments made at the public hearing on this item, and the Division did not offer any comments on this item. The Council recommended adoption of the proposed regulations implementing the RI Recreational Saltwater Fishing License.

As supported by the Council, I urge adoption of the proposed regulations implementing the RI Recreational Saltwater Fishing License.

Proposed Vessel-Based Regulations: On behalf of industry the Department brought forward general provisions that would clarify fishing from a vessel in various modes such as recreationally, party/charter, commercially, or more than one mode.

At the public hearing only one individual offered comments which pertained to sections 10.2 (Party/Charter Vessels) and 10.3 (Vessels Fishing Commercially). He stated under section 10.2 (Party/Charter vessels) and 10.3 (Vessels Fishing Commercially), if this had played out over this past summer; a party/charter captain and his mate, could have kept 16 fluke, 30 black sea bass, and 4 striped bass, while a strictly commercial fisher would not have been able to keep one striped bass or black sea bass for his own consumption whether caught in a trawl, pin hook or lobster pot. The individual felt this scenario was neither objective nor equitable and he was opposed to the regulatory language as proposed. He also noted if these provisions passed it would be imperative that enforcement do their best to insure none of the recreationally caught fish end up being sold commercially thus exhausting the commercial quota at an accelerated rate. The Division did not offer any comments on these items. The Council recommended adopting all four parts of the proposed vessel based regulations as proposed in section 10.

As supported by the Council, I urge adoption of the proposed vessel-based regulations.

Time Sensitivity- Regulations require that the Department notify all licensees and permit holders by November 1 that said license will expire on December 31 annually. Regulations also require that licensing rules be promulgated by December 1 of each year. Given the above mentioned rules, and the 20-day wait period between filing with the secretary of state and effectiveness, staff needs to file no later than Thursday, October 25th. **Therefore we would appreciate a final decision by or before the COB on Thursday, October 17.**

Approved for filing as presented — and modified by my
attached memo of Nov. 1, 2012
Janet L. Coit, Director 11/1/12
Date



**RHODE ISLAND
DEPARTMENT OF ENVIRONMENTAL MANAGEMENT**

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Office of the Director

To: Mark Gibson
Deputy Chief, marine Fisheries

From: Janet Coit
Director

Date: November 1, 2012

Re: Decisions Pertaining to September 12, 2012 Public Hearing Items

I have reviewed your memo of October 10, 2012, along with all of the supporting documentation provided therewith. I concur with all of the following recommendations, which were all consistent with the recommendations offered by the RI Marine Fisheries Council:

- Proposed changes to shellfish, finfish, and crustacean sector management plans
- Proposed amendments to the commercial fishing licensing regulations with regard to:
 - Quahogs;
 - Restricted finfish; and
 - Lobsters
- Amendments to the definitions for “actively fished,” “family member,” and “licensed captain”
- Provision to allow non-expiration of commercial fishing licenses for active duty military
- Proposal to create a research set aside endorsement
- Proposed regulations implementing the RI recreational saltwater fishing license
- Proposed vessel-based regulations

With regard to the proposed amendment to the commercial licensing regulations pertaining to ***soft-shell clams***, I favor maintaining the status quo, i.e., a 5:1 exit/entry ratio. I understand that that will allow for the issuance of 11 new soft-shell clam endorsements for 2012. My rationale is set forth below.

With regard to the proposed amendment to the commercial licensing regulations pertains to ***whelk***, I favor the proposal to not allow the issuance of new whelk endorsements except to those holding a CFL or PEL license with a quahog or soft-shell clam

endorsement who have been actively fishing. I understand that that will allow for the issuance of an as-yet undetermined, but relatively low number of new whelk endorsements for 2012. My rationale is set forth below.

Please initiate the filing process for all of the regulatory measures set forth in your memo, as modified by this memo, as soon as possible.

Soft-shell clams

I appreciate your well-founded concerns regarding the declining abundance of soft-shell clams in RI waters over the past few years, and the potential that overfishing may be occurring. I stand firm in my support for the development of management measures that will bring the fishing mortality rate in line with resource productivity, but I am not convinced that closing the door to new entrants, pursuant to the current licensing program, constitutes such a meaningful management measure.

I am persuaded by the industry consensus in support of status quo (5:1 exit/entry ratio) per the recommendation of the Council's Industry Advisory Committee, as well as the full Council's endorsement of that same recommendation.

The existing 5:1 exit/entry ratio is intended to meter the flow of new entrants into the fishery. If the fishery were capped at existing levels of participation, licensing could serve as a useful management tool. But the fishery is not capped in that way; no such proposal has been offered, nor envisioned. As such, we have a situation involving a huge amount of latent effort that could be activated at any time. In 2011, only 130 of the 1,336 licensees eligible to harvest soft-shell clams commercially were active in the fishery.

I recognize that the soft-shell clam population in RI waters increased significantly a few years ago, peaking in 2007, and has since declined. I further recognize that there was a large spike in effort and landings associated with that population burst, both of which have also dropped off considerably since 2007. But the recent decrease in effort has occurred despite the issuance of a modest number of new licenses/ endorsements. In 2011, 12 new soft-shell clam endorsements were issued, yet the total number of active participants in the fishery declined dramatically from 213 in 2010 to 130 in 2011.

As we move forward with a thorough examination of our shellfish resources and management programs, I anticipate that a refined analysis of the RI soft-shell clam resource and fishery will emerge, coupled with recommendations for management measures that can rebuild and stabilize the resource and support a sustainable fishery. Until then, I favor a continuation of the status quo approach with regard to licensing, which allows a relatively small number of new entrants to replace a much larger number of retirees. In my view, the potential impact of such a modest number of new entrants is far less than the potential impact of an activation of latent licenses.

Whelk

I appreciate your very valid concerns regarding this resource, which has been experiencing a surge in fishing pressure over the past few years. I understand that while the whelk resource is currently not being overfished, nor is overfishing occurring, the average landings per fisherman are declining, signaling that the resource may be on the verge of a major stock decline.

I know that DEM, with the support of the industry and the Council, recently enacted a series of protective measures, including an increased minimum size and a new pot limit. Also, a new whelk endorsement was enacted for 2012, allowing licensing to be used as a management tool for this fishery.

Against that backdrop, I understand that the IAC, the Division, and the Council all support the proposal not to issue any new whelk endorsements for 2013; however, the IAC, representing the industry's interests, favors grandfathering in the licensed commercial shellfishermen who failed to obtain the new whelk endorsement in 2012. The Council endorsed that recommendation, but added an additional element – that only those commercial shellfishermen who have been “actively fishing” over the past two years in the quahog and/or soft-shell clam fisheries would be eligible to obtain a whelk endorsement (in addition to those who held the whelk endorsement in 2012).

I appreciate and support the reasoning behind the Council's recommendation. When the new whelk endorsement was established in 2012, several commercial shellfishermen apparently failed to understand the need to obtain it in order to continue retaining and selling whatever whelk they harvested while bull-raking. While it seems appropriate at this time to close new entry into the whelk fishery, pending further analysis of the stock and the effects of increasing effort in the fishery, I agree with the Council that the door should not be closed to those active commercial shellfishermen who likely harvested whelk, to some extent, through 2011 and, perhaps inadvertently, failed to get a new whelk endorsement in 2012.

I understand that the number of fishermen who would qualify under the proposed grandfather provision is likely to be relatively low, and I further understand that, like the soft-shell clam fishery, the amount of latency that currently exists in the whelk fishery is huge. With the door still open to the potential activation of several hundred latent licenses, many of whom are not even engaged in commercial fishing at this time, I cannot see closing the door to the handful of active commercial shellfishermen who hold CFLs or PELs but failed to obtain whelk endorsements when they first became available this year.

As set forth in your memo, if it is determined that additional controls are needed to protect the whelk resource and the fishermen who depend on it, then consideration should be given to effort limits *that truly control effort* and/or to output controls such as catch limits and quotas.