



**RHODE ISLAND
DEPARTMENT OF ENVIRONMENTAL MANAGEMENT**
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Rhode Island Relay 711

Final Decision Memo

TO: Robert Ballou, Acting Chief, DFW
FROM: Janet Coit, Director DEM 
DATE: April 28, 2011
SUBJECT: Final Decision Pertaining to February 22, 2011 Marine Fisheries Public Hearing Item:
Soft-shell Clam Regulations

I have received and reviewed your April 26, 2011 briefing memo regarding the above-referenced item. I have also received and reviewed the supporting documentation submitted along with the memo, including: the minutes of the 2/16/11 RI Marine Fisheries Council's (RIMFC's) Shellfish Advisory Panel meeting, the public hearing summary document, a summary of public hearing comments, the minutes from the March 7, 2011 RIMFC meeting, and the February 28, 2011 memo from Mark Gibson to the Council, setting forth the Division's recommendations on the item.

I note that the above-referenced item was subjected to a thorough public review process, in accordance with the RI Administrative Procedures Act and via consultation with the RIMFC. I find the public record, and the RIMFC's recommendations on the issues, to be quite helpful, offering a solid basis for my review and consideration. I also hold in high regard the Division's recommendations on the issues, and I particularly appreciate the Division's efforts to inform the public discussion and work toward consensus with the RIMFC and the fishing community wherever possible.

Having fully considered all of the recommendations and supporting documentation, I hereby set forth the following final regulatory decision pertaining to soft-shell clams:

To be enacted: a statewide 2" minimum size; establishment of a new Conimicut Shellfish Management Area; and establishment of a 3-bushel limit for soft-shell clams within the new management area

Consistency with RIMFC: Two elements of the final decisions are consistent with the Council's recommendations; two other elements deviate, for the reasons set forth below.

(1) **2" minimum size.** The Council recommended adoption of a 1¾" minimum size, consistent with the comments offered at the public hearing. Drawing upon a

gonadal study by Brousseau (1978), the Division recommended adoption of a 2” minimum size, since egg production is minimal below that size and recent research shows that it is adult survival rate and fecundity that stabilizes soft-shell clam populations that are subject to high recruitment variation, as is the case in Upper Narragansett Bay.

At the Council meeting, it was noted that Massachusetts has a 2” minimum size for soft-shell clams; however, it was also noted that Massachusetts has a 10 percent tolerance standard with regard to their minimum size (i.e., up to 10 percent of a possession limit can include clams that fall short of the 2” minimum size).

Given the scientific analysis conducted by the Division, demonstrating that the bulk of the soft-shell clam resource in RI waters – estimated at about 86 percent – occurs in the upper Bay, particularly in the Conimicut Point area, and that the soft-shell clam resource in the Conimicut Point area has been declining since 2006, with recruitment failing to replace fishery removals, I find that a 2” minimum size, corresponding to peak fecundity, should help to stabilize the resource, by enhancing yield-per-recruit. Thus, I find that there is a rational, scientific basis for adoption of a 2” minimum size.

I further find that Rhode Island’s 15-piece-tolerance standard, as set forth in statute, may be too conservative, and should be investigated, with a view to adopting a standard more in line with Massachusetts’ 10 percent standard.

(2) **12-bushel daily limit.** The Council recommended maintenance of the status quo with regard to the 12-bushel daily limit for soft-shell clams outside the management areas. The Division recommended decreasing the limit to 6 bushels per day. I respect the Division’s position, but I find that there is an insufficient scientific basis to support the proposed reduction. Thus, I concur with the Council, and those who commented at the hearing, and find that the existing 12-bushel daily limit, outside the management areas, should remain unchanged.

(3) **Establishment of the New Conimicut Shellfish Management Area.** The Council recommended adoption of the new area, consistent with the recommendation of the Division. Some who commented at the hearing supported the designation; most were opposed. I find the designation to be a sound proposal, consistent with the purposes of Shellfish Management Areas as established by the RI General Laws. The designation affords both focus and flexibility. It gives DEM, in coordination with the Council and industry, the ability to craft management measures, on an evolving basis, that address the resource- and fishery-related needs pertaining to the area. The process has worked well for quahogs; Greenwich Bay would not be the reliably productive area that it is today were it not for its status as a shellfish management area. The establishment of the Conimicut Shellfish Management Area would be the first area established solely for the purpose of managing soft-shell clams. Given that

the vast majority of the soft-shell clam resource in RI waters comes from the Conimicut area, it makes good sense to subject it to sound management.

While the Division recommended establishing the northern boundary of the new management area north of the Conditional Area "A" closure line (specifically: a line running from Stokes Street to Massachusset Creek), I find that the northern boundary of the new management area should correspond to the northern boundary of Conditional Area "A."

I note that the Council recommended adoption of a 5-year sunset clause with regard to the new management area and reduced daily possession limits. While I do not feel that there is sufficient basis to establish such a specific timeframe, I do feel that it is essential to monitor the area closely, and pursue whatever regulatory adjustments may be necessary and appropriate to support the interests of those who rely on the area for food, recreation, and income.

(4) **3-Bushel Limit Within the New Management Area.** The Council recommended adoption of a 6-bushel daily limit within the new Conimicut Shellfish Management Area. The Division recommended adoption of a 3-bushel daily limit. Some who commented at the public hearing supported a reduced bushel limit for the area; most were opposed to any reduction. The Division offered compelling scientific evidence showing that the soft-shell clam resource in the Conimicut area has been subjected to overfishing during the past few years, and that significant reductions in fishing mortality are needed to allow the resource to rebuild and support a sustainable fishery. A reduced daily possession limit, per se, will not necessarily prevent overfishing or ensure rebuilding, but I find that it is an important and necessary step toward achieving those goals. Given the magnitude of resource depletion evident in the area, I am compelled to adopt the more conservative 3-bushel limit at this time. However, in keeping with the nature of the management area, I call upon the Division to closely monitor the area, and recommend adjustments to the possession limit – up or down – as needed, to protect the resource and support the fishery.

Additional Considerations. I am alarmed by the allegations that some divers may be using compressed air devices to excavate the sediment and expose the clams, perhaps via a loophole that unintentionally allows such activity if in pursuit of razor clams. Such practices can adversely impact habitat and render the animals living therein exposed and more vulnerable to predation. I call upon the Division of Law Enforcement to review current laws and regulations governing the use of compressed air devices for shellfish harvesting, and based on that review, to develop recommendations addressing the issue, for consideration by the Council.