



RHODE ISLAND
DEPARTMENT OF ENVIRONMENTAL MANAGEMENT

OFFICE OF THE DIRECTOR

235 Promenade Street, Room 425
Providence, Rhode Island 02908

To: Conor McManus
Chief, Marine Resource Management

From: Janet Coit
Director 

Date: May 4, 2021

Re: Final Decisions Pertaining to April 5, 2021 Marine Fisheries Public Hearing Items and May 3, 2021 RI Marine Fisheries Council meeting

I have received and reviewed your memo to me, dated May 4, 2021 (attached) regarding the regulatory matters that were subject to a public hearing on April 5, 2021 and the RI Marine Fisheries Council (Council) meeting on May 3rd. I have also received and reviewed all relevant supporting documentation, including the minutes of the May 3rd meeting of the Council.

I hereby approve all the recommendations, as set forth in your memo, which are consistent with those provided by the Council. The specific regulatory items, and the final decisions for each, are as follows:

1. **Summer Flounder and Black Sea Bass Transiting Provision for the Massachusetts Pilot Program:**

Decision: Not to adopt the rule that was noticed due to the concerns expressed by the Division of Law Enforcement, which then provided the basis for the recommendation of the Council. I appreciate the Division's efforts to propose and publicly vet proposals brought forward by industry that has the potential to improve flexibility of fishing practices and increase economic opportunity for the commercial fleet, and I direct the Division to continue to work with industry in this regard.

2. **Providence/Seekonk River Shellfish Management Area harvest season:**

Decision: Amend the rule as recommended by the Council, which opens the area to shellfish harvest per the season defined in your memo. I also accept the Council recommendation that closure of the area to harvest based on 90% harvest of the quota

not be adopted at this time. I thereby direct the Division to remove this provision from the final rule to be filed.

It is a great opportunity to be able to open this area to shellfish harvest after decades of being closed. I direct the Division to closely monitor harvest rates and fisheries independent survey data, from the area this year, and to update the current stock assessment with 2021 data added, with the goal of assessing the impacts of this year's harvest on the health of stock and determining sustainable management parameters in future years that ensures the sustainability of the shellfish resources in this area.

3. **Oyster harvest moratorium in Quonochontaug Pond Shellfish Management Area:**

Decision: Amend the rule as supported by the Division and Council to extend the oyster harvest moratorium in Quonochontaug Pond to November 15, 2023.



RHODE ISLAND
DEPARTMENT OF ENVIRONMENTAL MANAGEMENT
DIVISION OF MARINE FISHERIES
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Jamestown, Rhode Island 02835

INTER-OFFICE MEMO

TO: Janet Coit, Director
FROM: Conor McManus, Chief
DATE: May 4, 2021

SUBJECT: Decisions regarding proposed regulation amendments that were subject of a public hearing held on April 5th and RI Marine Fisheries Council (RIMFC) on May 3rd. The public hearing folder contains all the necessary documentation related to this hearing, including a summary of the oral comments made at the hearing, written comments received, the noticed annotated regulations, and public notice.

1. **Summer Flounder and Black Sea Bass Transiting Provision for MA Pilot Program (Part 1, proposed new section 1.9(D)):**

- **Background and Proposal:** Industry proposal intended to work in conjunction with a Massachusetts marine fisheries-based program which is currently in a pilot phase. This program authorizes Mass. permitted state water fishermen to possess two daily possession limits (aggregate) of summer flounder, black sea bass, and horseshoe crab when landing in Massachusetts. In recent years the core of Mass. state waters biomass of summer flounder has moved further to the east, which forces their small mobile gear fleet (day boats) to travel further to target them. To make these trips efficient and profitable, participants in the Mass. program are authorized to fish during a given day and then fish a second day and possess two daily possession limits of the aforementioned species. There are approximately ten RI based vessels with authorization to participate in the Mass. Program. This proposal represents a change in the RI transiting regulation, which would authorize properly licensed (duel permit holders) RI participants to possess both RI and Mass. possession limits in RI waters should respective state waters fishing activity overlap during a trip.
- **Public comments:** None provided.
- **Division of Law Enforcement:** The Division of law Enforcement (DLE) expressed serious concerns based on the potential for significant non-compliance and enforceability of this rule. Even with a VMS requirement, it would be

impossible for DLE to determine where the fish were caught (i.e., in RI, Mass., or federal waters), potentially resulting in non-compliance with the RI possession limit and landing regulations. Regulations require that fish caught in RI state waters must be landed in RI. Further hampering the DLE's ability to enforce possession limits is the allowance for vessels to fish in RI state waters while having a two day Mass. possession limit on board. All of the state's other transiting regulations require that gear be stowed during transit. Additionally, RI DLE officers expressed difficulty in their ability to determine a RI vessel's compliance while landing in another state.

- RIMFC: 7 - 0 to recommend to not support adoption of the rule due to concerns expressed by the DLE.
- Marine Fisheries: Considering the concerns expressed by the DLE and the recommendation of the Council, the Division does not support adopting the proposed rule at this time. The Division continues to support programs that allow fisheries more flexibility such as aggregate programs but the enforceability these programs is required. The Division will continue to examine how best to develop a regulatory framework that achieves both fishery and enforcement concerns.
- Timing to file: N/A (do not file).

2. **Providence/Seekonk River Shellfish Management Area harvest season (Part 4, section 4.12.2(S)):**

- Background: The water quality for the lower portion of the Providence River south of Gaspee Point has been recently upgraded by the Office of Water Resources to "Conditionally Approved" status. In anticipation of this change in water quality status, the Division first established these waters as a Shellfish Management Area pursuant to [R.I. Gen. Laws § 20-3-4](#), and has been completing a stock status of bay quahogs in order to provide information necessary to determine an acceptable harvest (i.e., maximum sustainable yield) for the area which recognizes the importance of the area as supporting recruitment for commercially significant harvest areas, namely Upper Narragansett Bay Conditional Area "A" (GA1-1) and Upper Narragansett Bay (GA1). The area is currently closed to harvest pursuant to marine fisheries regulations, [Part 4 – Shellfish](#) (see section 4.12.2(S)). The Division presented findings of the stock assessment and offered possible harvest scenarios to the Council's Shellfish Advisory Panel over two meetings, March 24 and April 14, of which recommendations of the SAP were then provided to the Council for their consideration at their meeting on May 3.
- Proposal: Division proposal in consultation with industry as follows: Open from 8:00 AM to 11:00 AM on the following dates:
 - May 26 and 28
 - June 2, 4, 7, 9, 11, 14, 16, 25, 28, 30
 - July 2, 6, 7, 9, 12, 14, 16, 19, 21, 23, 26, 28, 30
 - August 2 and 4
 - Additional provisions:

- If any of these dates are closed due to water quality impairment, additional dates will be opened for a total of twenty-seven (27) days in the season or until the quota is harvested (dates specified in rule).
- The area will be closed when 90% of the quota is harvested.
- Six bu./person/day commercial possession limit for MPURP and PEL w/Quahaug endorsement license holders
- Harvest of soft-shell clams and oysters prohibited.
- Notification of a season closure or change will be made to the public via the Division's listserv and webpage.
- Public comments: N/A; this amendment is exempt from requirements of APA pursuant to [R.I. Gen. Laws § 20-3-4](#). Opportunity for comments was provided at the Council meeting.
- RIMFC: 4-3 in support of the following:
 - Adopt the season as outlined above, including the provision to open additional days as specified if any of the days are closed due to water quality impairment.
 - Add dates of September 1 and 3 as alternative openings due to water quality impairment.
 - No additional shoredigging provisions outside the defined season.
 - Do not adopt provision for total allowable catch (quota) and season closure upon harvest of 90% of the quota.
- Marine Fisheries: Support as outlined herein and recommended by the Council.
- Timing to file: Immediately.

3. **Oyster harvest moratorium in Quonochontaug Pond Shellfish Management Area (Part 4, section 4.12.2(N)):**

- Background: The moratorium on oyster harvest in Quonochontaug Pond has been in effect since September 2010 due to extremely low abundance and to initiate restoration efforts. This moratorium was then extended twice, in 2013 and 2016, and is set to expire on September 15, 2021.
- Proposal: The Division initially proposed to the Council's Shellfish Advisory Panel to extend the moratorium to November 15, 2025, in order to align with Bissel Cove/Fox Island moratorium expirations. The SAP voted unanimously to extend only until November 15, 2023.
- Public comments: N/A (this amendment is exempt from requirements of APA pursuant to [R.I. Gen. Laws § 20-3-4](#)).
- RIMFC: 7 - 0 in support of extending the moratorium to November 15, 2023.
- Marine Fisheries: Support as recommended by the Shellfish Advisory Panel and Council. The Division will look to present an update of the Division's restoration efforts and the status of the health of the fishery in the pond prior to the moratorium expiration, with the aim of determining if maintaining the moratorium is warranted.
- Timing to file: Immediately.