



RHODE ISLAND

DEPARTMENT OF ENVIRONMENTAL MANAGEMENT

OFFICE OF THE DIRECTOR

235 Promenade Street, Room 425
Providence, Rhode Island 02908

To: Conor McManus
Chief, Division of Marine Fisheries

From: Terrence Gray, P.E.
Acting Director

Terrence Gray

Digitally signed by
Terrence Gray
Date: 2022.05.02 08:52:25
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Date: April 29, 2022

Re: Final Decisions Pertaining to the April 11, 2022 Marine Fisheries Public Hearing Items and April 26, 2022 Marine Fisheries Council meeting.

I have received and reviewed your memo to me, dated April 28, 2022 (attached), regarding the regulatory matters that were subject to a public hearing on April 11, 2022 and the RI Marine Fisheries Council (Council) meeting on April 26, 2022. I have also received and reviewed all relevant supporting documentation, including the public comments received and the draft Council meeting minutes.

The specific regulatory items, and the final decisions for each, are as follows:

1. **Providence/Seekonk River Shellfish Management Area harvest season (Part 4 – Shellfish):**

Decision: Amend the rule for the commercial harvest schedule as recommended by the Council and as set forth below. For the recreational harvest schedule, amend the rule to allow shore digging daily.

Commercial Harvest

- Open 8:00- 11:00AM only on scheduled open days.
- May 23 through Sept. 2: Open on the first two non-consecutive weekdays of each week (ex. Mon, Wed. or Tuesday, Thursday, or Wed., Friday), excluding May 30 and July 4 which shall be closed to harvest. June 30 shall be open to harvest regardless of other days in the week that are open or closed.
- Sept. 6 through Oct. 28: Open one day/week on the first

available weekday, excluding Oct. 10 (holiday/closed).

- Dec. 12 through Dec. 30: Open one day a week first available weekday for a maximum of 3 open days.

Recreational Harvest

- Recreational shore digging: Open daily.

The Division of Law Enforcement brought forth two concerns regarding this proposal – one pertaining to the challenge of scheduling patrols to enforce a commercial harvest schedule that varies from week-to-week during the May 23 – September 2 period; the other pertaining to the added challenge of enforcing such a variable schedule for the recreational fishery during the same period.

With regard to commercial harvest, I recognize there is inherent variability associated with the schedule due to rainfall closures, and further recognize that the area is predicted to be open for approximately 20 days during this period due to rainfall closures. These factors serve as the basis for my decision to adopt the variable schedule for commercial harvest, as proposed by the SAP and recommended by the Council. I have asked the Division of Law Enforcement to report to me and the Council, following the conclusion of the season, to assess performance, compliance, and enforcement issues; these insights will be important to help guide and inform the scheduling of the area for next year.

With regard to recreational harvest, I find it too challenging for DEM to enforce a variable schedule for a sector that is not licensed and is unlikely, as a whole, to be able to follow and comply with an ever-changing schedule that mixes rainfall closures with the first two non-consecutive weekday openings. The Department's ability to communicate changes in the schedule is largely limited to the shellfish hotline. That has proven effective for communicating with licensed commercial harvesters, but there is good reason to doubt its effectiveness for communicating with unlicensed recreational harvesters. Moreover, shore digging by recreational harvesters in other shellfish management areas is open daily. Thus, to maintain consistency and ease enforcement concerns, I support the Division of Enforcement's recommendation to decouple the two schedules by establishing a recreational shore digging schedule for the Providence/Seekonk River Shellfish Management Area that mirrors that of other areas.

2. Part 2 - Commercial Marine Fishing Licenses, Landing Permits, and Party and Charter Licenses:

Decision: Amend the rule, as recommended by the Division and Council, which re-organizes and streamlines the commercial license regulations consistent with the new commercial licensing statute that takes effect on July 1, 2022.

3. 2022 Research Pilot Aggregate Program Participation:

Decision: As recommended by the Division and Council, file a Direct Final Rule

Amendment that would increase the maximum number of available permits for participation in the 2022 Research Pilot Aggregate Program from 54 to 59.



RHODE ISLAND
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DIVISION OF MARINE FISHERIES
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INTER-OFFICE MEMO

To: Terrence Gray, P.E., Acting Director

From: Conor McManus, Chief

MCM

Date: April 28, 2022

Subject: Decisions regarding proposed and prospective regulation amendments that were subject of a public hearing held on April 11th, 2022, and a RI Marine Fisheries Council (RIMFC) meeting on April 26th.

The public hearing folder contains all the necessary documentation related to this hearing, including the proposed rules that were publicly noticed and the comments received. Below is a summary of the proposed amendments:

1. Providence/Seekonk River Shellfish Management Area harvest season (Part 4 – Shellfish):

- **Background:** The Lower Providence River was re-classified by the OWR in 2021 to conditionally approved. In response to this change, a harvest schedule was adopted in rule for 2021, which is now expired. The Council's Shellfish Advisory Panel (SAP) met on April 7 and April 20, 2022, and recommended a 2022 harvest schedule as follows:
 - Open 8:00- 11:00AM only on scheduled open days.
 - May 23 through Sept. 2: Open on the first two non-consecutive weekdays of each week (ex. Mon, Wed. or Tuesday, Thursday, or Wed., Friday).
 - June 30: Open.
 - May 30 and July 4: Closed.
 - Sept. 6 through Oct. 28: Open one day/week on the first available weekday, excluding Oct. 10 (holiday/closed).
 - Dec. 12 through Dec. 30: Open one day a week first available weekday for a maximum of 3 open days.

- Recreational shoredigging: Open at the one peck/person/day from sunrise until sunset on scheduled open days.
- Public comment: N/A; amendments to Shellfish Management Area harvest schedules are exempt from the requirements of the Administrative Procedures Act pursuant to R.I. Gen. Laws § 20-3-4.
- RIMFC: 5-0 in support of the SAP recommended schedule, with a modification to amend the non-resident recreational possession limit to one half (½) peck per person per day consistent with possession limits for all other management areas.
- Division of Law Enforcement: At the Council meeting, DLE expressed concerns regarding the proposed harvest schedule with open days not clearly established in rule, as this additional complexity of weekly changes on top of rain closures will make it challenging to enforce from week to week. DLE also expressed concern that such a schedule applied to recreational harvest would be extremely difficult for the recreational harvest community to follow, potentially resulting in significant non-compliance and complaints received.
- Marine Fisheries: The Council recommended schedule provides for a total of approximately 41 potential open days for 2022. Based on historical rain events in Greenwich Bay with similar rain triggers for closures, the underlying assumption is that half of the days in the Providence River will be closed, resulting in approximately 20 days of fishing. The Division proposed to the SAP a schedule of 30 days (with a target of 15 days being open) based on simulating Providence River catch from 2021 and in the context of their estimated maximum sustainable yield. A target opening of 20 days was the upper limit on the uncertainty around the estimated 15 days. While this proposal is technically within the bounds of the uncertainty of the 15 days estimated, 20 days would be considered a risk tolerant management approach by the Division. Further, it is unclear how the rolling date complexity proposed by the Council violates the assumptions of 50% closure days based on Greenwich Bay, given that management plan is a fixed schedule.

2. **Part 2 - Commercial Marine Fishing Licenses, Landing Permits, and Party and Charter Licenses:**

- Background: Amendments are proposed to re-organize the rule for improved organization and clarity, and to namely changes to types of licenses and endorsements, and fees. The amended law goes into effect on July 1, 2022.
- Public comment: No comments received.
- RIMFC: 5-0 in support of adopting the amendments as proposed.
- Marine Fisheries: Support to adopt the amendments as proposed.

3. **2022 Research Pilot Aggregate Program Participation:**

- Background: Amendments to this rule were recently filed (effective April 13, 2022) which increased the number of eligible participants in the program from 36 to 54, with the program continuing for one additional year. A total of 55 applications were received during the application period for participation in the

program for 2022, with an additional four received after the application period from previous participants. No amendments to the 54-participant regulation were noticed based on the timing of the application period; the matter was brought before the Council for advice on amending the rule to increase the number of available participants in an effort to accommodate late returning applicants and the one individual exceeding the 54-participant limit.

- Public comment: N/A. The rule is not currently out to public notice.
- RIMFC: 5-0 in support of noticing amendments to increase the number of available permits to from 54 to 59 to accommodate the additional 5 applications received.
- Marine Fisheries: Support for the Council recommendation. The Division would look to notice the rule via Direct Final Amendment as soon as possible, which would result in the rule becoming effective 30 days from the date of the public notice if no objections are received.