



**RHODE ISLAND**  
**DEPARTMENT OF ENVIRONMENTAL MANAGEMENT**

**OFFICE OF THE DIRECTOR**

235 Promenade Street, Room 425  
Providence, Rhode Island 02908

**To:** Conor McManus  
Deputy Chief, Marine Resource Management

**From:** Janet Coit  
Director

**Date:** November 18, 2020

**Re:** Final Decisions Pertaining to October 6, 2020 Marine Fisheries Public Hearing Items

I have received and reviewed your memo to me, dated November 5, 2020, and attached herewith, regarding the regulatory matters that were subject to a public hearing on October 6, 2020. I have also received and reviewed all relevant supporting documentation, including the public comments and draft meeting minutes from the November 2, 2020 meeting of the RI Marine Fisheries Council (Council).

With one exception, I hereby approve all the recommendations, as set forth in your memo, which are consistent with those provided by the Council. The exception pertains to one provision associated with the Direct Sale Dealer License, which has been addressed and resolved via a more nuanced approach than the one recommended by the Division and Council. The specific regulatory items, and the final decisions for each, are as follows:

1. **Correction to activity standard criteria for the issuance of a new license in instances of incapacity (section 2.7.5(D)(1)(b)(2)):**
  - Decision: Amend the rule as noticed and recommended by the Council, which clarifies the issuance of a new license in instances of “incapacity” in lieu of “medical hardship.”
2. **Amend the Activity Standard criteria for the date that landings must have occurred, from 2006 to 2010, for the issuance of new licenses in instances of incapacity (section 2.7.5(D)(1)(b)(2)):**
  - Decision: Amend the rule as noticed and refined and recommended by the Council, which replaces 2006 as the last date that may be used to meet the activity standard for obtaining a new license in instances of incapacity, and replaces it with a rolling timeframe beginning ten years prior to the year when a new license is sought.

**3. Clarify eligibility requirements regarding the issuance of a new license to resident family members in instances of incapacity (section 2.7.5(E)(6)(a)):**

- Decision: Amend the rule as noticed and recommended by the Council, which clarifies that a license must be actively fished to meet the eligibility standard for the issuance of a new license to resident family members in instances of incapacity.

**4. Add prioritization criteria for the issuance of new licenses and endorsements for veterans to account for fishing activity lost during active duty (section 2.7.5(G)(1)(f)):**

- Decision: Amend the rule as noticed and refined and recommended by the Council, which enables veterans returning from active military duty to account for fishing activity lost during duty in the prioritization process for the issuance of new licenses and endorsements.

**5. Direct Sale Dealer License (proposed new section 2.7.9(F)):**

- Decision: Adopt the new rule, as proposed, with the following modifications:
  - The annual license fee shall be \$50.
  - Strike the provision requiring all finfish to be sold within 24 hours of harvest and replace with a new provision that carries forward the existing state and federal prohibitions on engaging in processing activities unless licensed by the RI Department of Health to conduct such activities.
- Comment: I recognize and appreciate the broad support for this new license program, which provides commercial harvesters the opportunity to sell certain species of finfish, and to sell and transport for sale live lobsters, crabs and whelks, directly to consumers and licensed retailers from the vessel on which they were harvested. This first-ever opportunity, in effect since April of this year under interim authorization, is now codified via this regulation, firming up a new pathway for local sales of seafood in Rhode Island.

I also acknowledge the necessity of aligning the regulatory program for this license with governing state and federal food-safety requirements. Adhering to those requirements protects our local food system and enables the seafood produced by our commercial fishing industry to be sold via interstate commerce. A core food-safety requirement, set forth at the federal level by the FDA and at the state level by the RI Department of Health (RIDOH), is that commercial harvesters cannot engage in processing without a wholesale license. Processing, as defined by the FDA, includes holding, and holding involves the storage of seafood for any significant length of time following landing.

Finally, I am sensitive to the concerns raised during the public comment period, underscored by the recommendations of the Council, that the proposed regulatory provision requiring all finfish to be sold within 24 hours of harvest posed hardships for holders of Direct Sale Dealer Licenses seeking to comply with the

processing prohibition. With a view to addressing this hardship, members of the public and the Council recommended modifying the 24-hour standard to begin at the time of landing, instead of the time of harvest. This proposal was vetted with RIDOH and found to be untenable, given existing state and federal regulatory requirements.

Following a thorough review of the issue by RIDEM and RIDOH, during which all options were explored, it has become evident that the most appropriate way to address the issue is to strike the provision requiring all finfish to be sold within 24 hours of harvest and replace it with a new provision that carries forward, generically, the existing state and federal prohibitions on engaging in processing activities unless licensed by RIDOH to do so. This approach drops the 24-hour clock but maintains the requirement that finfish sold pursuant to the Direct Sale Dealer License may not be held for an excessive length of time. It will be incumbent upon license holders to act in good faith in accordance with this requirement, and it will be necessary for RIDEM and RIDOH to exercise discretion in enforcing the provision.

The hallmarks of our ongoing efforts to address the needs and interests of our vibrant and diverse commercial fishing and seafood industry are communication, accommodation, collaboration, and sound reasoning. I believe this decision checks all four of those boxes.

- Regarding scallops, I defer to, and fully support, the interim authorization provided by the RI Department of Health via memo dated November 10, 2020, attached hereto.

**6. Winter Harvest Schedule for Greenwich Bay and Bissel Cove/Fox Island Shellfish Management Areas:**

- Decision: Amend the schedule as recommended by the Council, making minor adjustments to the dates during which the management areas will be open for harvest during December 2020.



**Rhode Island Department of  
Health**

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Memo

To: Department of Environmental Management

From: Center for Food Protection, RIDOH  
Catherine White, Supervising Environmental Health Food Specialist  
Catherine Feeney, Chief, Center for Food Protection

Date: November 10, 2020

Subject: Direct Sales of Scallops.

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Due to the COVID-19 pandemic, fishing vessel owners and crews who have obtained a Direct Sale Dealer License from DEM and are operating pursuant to the authorization provided by this memo are permitted to sell scallops directly to consumers and the restaurant industry until such time as the State determines otherwise.

Scallops must be processed (shucked) on the vessel and may be sold in fresh or frozen form. Temperature control in the form of ice or mechanical refrigeration is required to prevent decomposition. Oxygen permeable packaging that does not create an anaerobic environment, including plastic containers and bags that are not vacuum sealed, are permitted to prevent the risk of *Clostridium botulinum* associated with toxin production that can occur in an anaerobic environment.

These allowances are intended to assist the scallop industry during the pandemic due to economic uncertainty without compromising food safety



**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, Deputy Chief

DATE: November 5, 2020

SUBJECT: Decisions regarding proposed amendments to Part 2 – Commercial and Recreational Saltwater Fishing Licensing regulations that were the subject of a public hearing held on October 6<sup>th</sup> and RI Marine Fisheries Council (RIMFC) on November 2<sup>nd</sup>. 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. Correction to Activity Standard criteria for the issuance of a new license in instances of Incapacity (section 2.7.5(D)(1)(b)(2)):**

- **Background:** Rule incorrectly refers to “medical hardship.” A new license is only issued in instances of incapacity; a temporary “operator permit” is issued in instances of medical hardship.
- **Proposal:** Division proposal to replace “hardship” with “incapacity” in this section.
- **Public comments:** None provided.
- **RIMFC:** 8 - 0 in support of recommending adoption as proposed.
- **Marine Fisheries:** Support to adopt as proposed and as recommended by the Council.
- **Timing to file:** Immediately.

**2. Amend the Activity Standard criteria for the date that landings must have occurred, from 2006 to 2010, for the issuance of new licenses in instances of incapacity (section 2.7.5(D)(1)(b)(2)):**

- **Background:** Rule initially adopted in 2016 provides for 2006 as the last year that landings may be used to meet the standard; use of that year was due to the

reliability of reporting data since 2006 and to capture a 10 year period from the time of landings.

- Proposal: Division proposal, as advised by the Office of Legal Services, to update the start of the timeframe from 2006 to January 1, 2010.
- Public comments: None provided.
- RIMFC: Recommended amending the proposal to establish a rolling timeframe beginning ten years prior to the year when a new license is sought pursuant to section 2.7.5(D)(1)(b)(2). 8 - 0 in support of recommending adoption of the proposal as modified by the Council.
- Marine Fisheries: Support to adopt as proposed and as recommended by the Council, including the modification recommended by the Council.
- Timing to file: Immediately.

**3. Clarify eligibility requirements regarding the issuance of a new license to resident family members in instances of incapacity (section 2.7.5(E)(6)(a)):**

- Background: The Division determined earlier this year that the rule was not consistent with statute in that it did not reference the activity standard requirement.
- Proposal: Division proposal to clarify that the license must be actively fished to meet eligibility for a new license in instances of incapacity.
- Public comments: None provided.
- RIMFC: 8 - 0 in support of recommending adoption as proposed.
- Marine Fisheries: Support to adopt as proposed and as recommended by the Council.
- Timing to file: Immediately.

**4. Add prioritization criteria for the issuance of new licenses and endorsements for veterans to account for fishing activity lost during active duty (section 2.7.5(G)(1)(f)):**

- Background: The Division received a proposal to use prior history to meet the activity standard for prioritization and lottery for the issuance of new licenses and endorsements for veterans returning from active military service.
- Proposal: Public proposal to provide for prioritization criteria for the issuance of new licenses and endorsements for veterans to account for fishing activity lost during active duty.
- Public comments: None provided.
- RIMFC: Recommended amending the proposal by replacing “conscription” with “enlistment.” 8 - 0 in support of recommending adoption of the proposal as modified by the Council.
- Marine Fisheries: Support to adopt as proposed and as recommended by the Council, including the modification recommended by the Council.
- Timing to file: Immediately.

## 5. Direct Sale Dealer License (proposed new section 2.7.9(F)):

- Background: Rule adopted in April 2020 via emergency action in response to Covid-19.
- Proposal:
  - Division proposal to establish the Direct Sale Dealer license as a permanent license type.
  - Proposed effective date of January 1, 2021 to be made concurrent with expiration of current emergency rule.
  - Authorizes the direct sale of allowable finfish and live crustacean species from the fisherman directly to consumers and licensed seafood retailers dockside from the vessel on which they were harvested.
  - Also authorizes the transport and sale of live crustacean species from the fisherman directly to consumers and licensed seafood retailers from the vessel on which they were harvested.
- New changes proposed by Division not currently part of emergency rule:
  - Proposed annual fee of \$200, consistent with other dealer license fees.
  - Add live whelk to the list of species authorized for sale, and transport for sale, under license.
  - Add that applicants must secure permission from both the property owner and municipality at the location(s) where direct sales will be conducted, and that any change in location requires a new application and license re-print fee of ten dollars (\$10).
- Public comments: 3 written comments received:
  - Change annual fee from \$200 to \$50.
  - Add sea and bay scallop meats to list of authorized species.
  - Modify the provision requiring that all finfish be sold on the same 24-hour day harvested, by instead requiring that all finfish be sold in a 24-hour period commencing either at the start of the trip or at the time of landing.
- RIMFC: Recommended amending the proposal by:
  - Reducing the annual license fee from \$200 to \$50.
  - Adding sea and bay scallop meats to list of authorized species.
  - Modifying the provision requiring that all finfish be sold on the same day harvested, by instead requiring that all finfish be sold in a 24-hour period commencing at the time of landing.
  - 8 – 0 in support of recommending adoption of the proposal, as modified by the Council
- Marine Fisheries: Support to adopt as proposed and as recommended by the Council, including the modifications recommended by the Council.
- Timing to file: Immediately.

## 6. Winter Harvest Schedule for Greenwich Bay and Bissel Cove/Fox Island Shellfish Management Areas:

- Background: Annual review of winter harvest schedules for shellfish management areas by Shellfish Advisory Panel (SAP) and Council.

- Proposal: Amend schedules consistent with recommendation of SAP: Open from 8:00 AM to 12:00 PM on December 9, 11, 14, 16, 18, 21, 22, 23, 24, 28, 29, 30. If one of the dates are closed due to water quality impairment, December 31 will open for harvest.
- Public comments: N/A (not a hearing item; not subject to R.I Gen. Laws Chapter 42-35 “Administrative Procedures”).
- RIMFC: 8 - 0 in support of recommending adoption of the amended schedules as recommended by the SAP.
- Marine Fisheries: Support to adopt as proposed and as recommended by the Council.
- Timing to file: Immediately.