



RHODE ISLAND
DEPARTMENT OF ENVIRONMENTAL MANAGEMENT

OFFICE OF THE DIRECTOR
235 Promenade Street, Room 425
Providence, Rhode Island 02908

To: Scott Olszewski
Acting Chief, Division of Marine Fisheries

From: Terrence Gray, P.E. **Terrence Gray**
Director

Digitally signed by
Terrence Gray
Date: 2024.10.18 15:09:07
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Date: October 15, 2024

Subject: Final decisions regarding proposed amendments of the RI Marine Fisheries regulations.

I have received and reviewed your memo to me, dated October 11, 2024 (attached), regarding the regulatory matters that were subject of a public hearing held on September 10, 2024 and RI Marine Fisheries Council meeting held on October 7, 2024. The final decision for each regulatory matter is as follows:

1. Shellfish harvest schedule for Greenwich Bay, Bristol Harbor, and Bissel Cove/Fox Is., Shellfish Management Areas (aka “winter” harvest areas)

Decision: Amend the rule as recommended by the Council and supported by the Division, which modifies the December 2024 harvest schedule for the Greenwich Bay Shellfish Management Area to be open on December 11, 13, 16, 17, 18, 19, 20, 23, 24, 26, 27, and 30.

2. Commercial netting prohibition in Upper Pt. Judith Pond

Decision: Amend the rule as recommended by the Council and Division, which amends this area description (Part 6 – General Equipment Provisions) using defined landmarks, to include the entirety of the upper pond and associated coves, and to include new landmarks in rule to describe the area (Part 1 – Definitions and General Provisions, section 1.13.3 (i.e., the landmark table in the rule)). This rule change reflects a modernization of how the area is described in regulation and reduces the ambiguity of the boundary lines.

3. Commercial netting prohibition in the Narrow River

Decision: Amend the rule as recommended by the Council and Division, which amends this area description (Part 6 – General Equipment Provisions) using defined landmarks, to include the entirety of lower part of the river from Sprague bridge to the mouth of the river, and to include new landmarks in rule to describe the area (Part 1 – Definitions and General Provisions, section 1.13.3 (i.e., the landmark table in the rule)). This rule change reflects a modernization of how the area is described in regulation and reduces the ambiguity of the boundary lines.

4. Fixed gear prohibition in the Foster Cove Channel

Decision: Amend the rule as recommended by the Council and Division, which amends this area description (Part 6 – General Equipment Provisions) using defined landmarks, and to include new landmarks in rule to describe the area (Part 1 – Definitions and General Provisions, section 1.13.3 (i.e., the landmark table in the rule)). This rule change reflects a modernization of how the area is described in regulation and reduces the ambiguity of the boundary lines.

5. Fixed gear prohibition in the Narrows of Charlestown Pond

Decision: Amend the rule as recommended by the Council and Division, which amends this area description (Part 6 – General Equipment Provisions) using defined landmarks, and to include new landmarks in rule to describe the area (Part 1 – Definitions and General Provisions, section 1.13.3 (i.e., the landmark table in the rule)). This rule change reflects a modernization of how the area is described in regulation and reduces the ambiguity of the boundary lines.

6. Direct Sales Dealer License

Decision: Amend the rule as recommended by the Council and Division, which amends rules for this license as follows:

- Add live shrimp and processed (shucked) scallops (including both bay and sea scallops) to species authorized for sale under the license
- Add live shrimp to species authorized for transport under the license
- Add that scallops as prohibited for transportation
- Add a new section that specifies that the direct sale of oysters, clams, mussels, and roe-on scallops is prohibited
- Add that shrimp must be sold live
- Add that transportation is limited to live crabs, live shrimp, and live whelk
- Add storage and handling requirements for scallops
- Add that scallops may be “processed” in accordance with RIDOH regulations

Consistent with the Council's recommendation, I ask that the Division consider any unintended consequences with transitioning from the Dockside Sales Endorsement to the Direct Sales Dealer License and solicit public feedback through the regulatory cycle in 2025.

7. Dockside Sales Endorsement

Decision: Amend the rule as recommended by the Council and Division, which will amend the rule to strike all elements of the Dockside Sales Endorsement (i.e., the endorsement would no longer be available for issuance) and direct the Division to investigate any unintended consequences with transitioning to only the direct sales dealers license (e.g., reporting) within the regulatory cycle in 2025. I also ask that the Division offer expanded technical assistance and trainings to help with the transition to the Direct Sales Dealer License.



RHODE ISLAND
DEPARTMENT OF ENVIRONMENTAL MANAGEMENT
DIVISION OF MARINE FISHERIES
3 Fort Wetherill Road
Jamestown, Rhode Island
02835

To: Terrence Gray, P.E., Director

From: Scott Olszewski, Acting Chief *Scott D. Olszewski*

Date: October 11, 2024

Subject: Decisions regarding proposed regulation amendments to the RI Marine Fisheries regulations

Proposed amendments to the RI Marine Fisheries regulations were publicly noticed on August 15, 2024. A public hearing was then held on September 9, 2024 followed by a RI Marine Fisheries Council meeting on October 7, 2024. A public workshop was held on July 16th to solicit feedback on proposals being considered by the Division, and to provide opportunity for additional proposals to be considered.

The public hearing folder contains all the necessary documentation related to this hearing, including the proposed rules that were publicly noticed and any comments received. Below is a summary of the proposed amendments and the Division's recommendation for the final rules to be filed.

1. **Shellfish harvest schedule for Greenwich Bay, Bristol Harbor, and Bissel Cove/Fox Is., Shellfish Management Areas (aka "winter" harvest areas):**

- **Background/proposal:** The harvest schedules for Greenwich Bay, Bissel Cove/Fox Island and Bristol Harbor Shellfish Management Areas (aka "winter harvest areas") are reviewed annually by the Council. Per rule, the December schedule for Greenwich Bay may include up to 48 hours of permitted shellfishing. The Council's Shellfish Advisory Panel (SAP) met on September 18th and recommended the following changes:
 - **Greenwich Bay:** Motion made to amend the December 2024 schedule from the default schedule currently in effect to open on December 11, 13, 16, 17, 18, 19, 20, 23, 24, 26, 27, 30, totaling 48 hours of available harvest time. This motion passed 10-0.
- **Public comments:** Amendments to rules in established Shellfish Management Areas are exempt from the requirements of Chapter 42-35 "*Administrative*

Procedures” pursuant to [R.I. Gen. Laws § 20-3-4](#)). As a proposed rule was not publicly noticed, opportunity for public input was provided at SAP and Council meetings. One comment was provided in support of this schedule.

- RIMFC: 5 - 0 in support of adopting the SAP recommended schedule for Greenwich Bay for December 2024.
- Marine Fisheries: Support for the Council recommendation as consistent with the rule that authorizes a maximum of 48 hours of permitted shellfishing in this area.

2. **Commercial netting prohibition in Upper Pt. Judith Pond:**

- Background/Issue: The area of this prohibition is not clearly described in rule (*Part 6 – General Equipment Provisions*). The landmarks *Blue Rock Point*, *Old Cellar Point*, and *Squally Point* as currently used in the rule cannot be located. It would appear that the rule as currently written includes two separate areas of the upper pond: the area of the “narrows” in the lower part, and northern section most likely encompassing the marinas and mooring fields of the upper pond. This rule has been in place since at least 1983.
- Proposed rule: Division proposal to amend the area description in rule (*Part 6 – General Equipment Provisions*) using defined landmarks to include the entirety of the upper pond and associated coves; and to include new landmarks used to describe the area in rule (*Part 1 – Definitions and General Provisions*, section 1.13.3 (i.e., the landmark table in the rule)).
- Rationale:
 - The activities prohibited are believed to no longer be occurring or to occur again. The Division therefore believes that effect on industry would be negligible.
 - The proposed rule provides for additional protection for winter flounder and river herring
 - The rule as currently written is unenforceable without a precise area description
- Public comment: No comments were provided.
- RIMFC: 5-0 in support of adopting the proposed rule as noticed.
- Marine Fisheries: Support to adopt the proposed rule change as noticed.

3. **Commercial netting prohibition in the Narrow River:**

- Background/Issue: The area of this prohibition is not clearly described in rule (*Part 6 – General Equipment Provisions*); it is not clear what is meant by the *north and south sides of the upper Narrows*. This rule has been in place since at least 1983.
- Proposed rule: Division proposal to amend the area description in rule (*Part 6 – General Equipment Provisions*) using defined landmarks so the area is clearly defined and enforceable, and to include the entirety of the lower Narrow River from the Sprague bridge to the mouth of the river; and to include new

landmarks used to describe the area in rule (*Part 1 – Definitions and General Provisions*, section 1.13.3 (i.e., the landmark table in the rule)).

- **Rationale:**
 - The activities prohibited are believed to no longer be occurring or to occur again. The Division therefore believes that effect on industry would be negligible.
 - The proposed rule provides for additional protection for winter flounder and river herring
 - The rule as currently written is unenforceable without a precise area description
- **Public comment:** No comments were provided.
- **RIMFC:** 5-0 in support of adopting the proposed rule as noticed.
- **Marine Fisheries:** Support to adopt the proposed rule change as noticed.

4. **Fixed gear prohibition in the Foster Cove Channel:**

- **Background/Issue:** This area is not clearly described in rule (*Part 6 – General Equipment Provisions*). This rule has been in place since at least 1983.
- **Proposed rule:** Division proposal to amend the area description in rule (*Part 6 – General Equipment Provisions*) using defined landmarks so the area is clearly defined and enforceable; and to include new landmarks used to describe the area in rule (*Part 1 – Definitions and General Provisions*, section 1.13.3 (i.e., the landmark table in the rule)).
- **Public comment:** No comments were provided.
- **RIMFC:** 5-0 in support of adopting the proposed rule as noticed.
- **Marine Fisheries:** Support to adopt the proposed rule change as noticed.

5. **Fixed gear prohibition in the Narrows of Charlestown Pond:**

- **Background/Issue:** This area is not clearly described in rule (*Part 6 – General Equipment Provisions*). This rule has been in place since at least 1983.
- **Proposed rule:** Division proposal to amend the area description in rule (*Part 6 – General Equipment Provisions*) using defined landmarks so that area is clearly defined and enforceable; and to include new landmarks used to describe the area in rule (*Part 1 – Definitions and General Provisions*, section 1.13.3 (i.e., the landmark table in the rule)).
- **Public comment:** No comments were provided.
- **RIMFC:** 4-0-1 (1 abstention) in support of adopting the proposed rule as noticed.
- **Marine Fisheries:** Support to adopt the proposed rule change as noticed.

6. **Direct Sales Dealer License:**

- **Background/Issue:** The Division received a request from industry to consider amending the rule to add live shrimp and slipper shells, a type of gastropod, to

the species authorized under this license. In response, the Division consulted with the RI Dept. of Health and DEM's Office of Water Resources, as rules for this license must be compliant with RIDOH rules "*Good Manufacturing Practices for Food*" and the *National Shellfish Sanitation Program (NSSP) Model Ordinance*. The result of those discussions was that only live shrimp could be added to the list of authorized species. Slipper shells were not added as they are filter feeders and thus could not be authorized per the RIDOH regulations. The proposed rule has been cleared by both RIDOH and RIDEM OWR as compliant with their respective rules and programs.

- Proposed rule: Industry/Division proposal to amend the rule as follows:
 - a. Section 7.10(A)(1) "Applicability": Add live shrimp and processed (shucked) scallops (including both bay and sea scallops) to species authorized for sale under the license.
 - b. Section 7.10(A)(2) "Applicability": Add live shrimp to species authorized for transport under the license.
 - c. Section 7.10(E)(3) "Prohibited Activities": Add that scallops as prohibited for transportation.
 - d. Section 7.10(E)(4) "Prohibited Activities": Add a new section that specifies that the direct sale of oysters, clams, mussels, and roe-on scallops is prohibited
 - e. Section 7.10(F)(5) "Storage and handling Requirements": Add that shrimp must be sold live
 - f. Section 7.10(F)(6) "Storage and handling Requirements": Add that transportation is limited to live crabs, live shrimp, and live whelk
 - g. Section 7.10(F)(7) "Storage and handling Requirements": Add storage and handling requirements for scallops
 - h. Section 7.10(F)(8) "Storage and handling Requirements": Add that scallops may be "processed" in accordance with RIDOH regulations.
- Public comment: One comment was provided to allow for submittal of landings reports for those license holders that sell live lobster and crabs **only** on a quarterly basis (as currently required for the Dockside Sales Endorsement), as opposed to bi-weekly reporting as currently required.
- RIMFC: Each section where amendments were proposed were discussed and voted on individually, as follows:
 - a. Add live shrimp and processed (shucked) scallops (including both bay and sea scallops) to species authorized for sale under the license: Motion was made to adopt amendments to section 7.10(A)(1) as noticed, with the clarification that the final rule reflect that processed scallops include "shucked adductor meat only" (this language to be added to final rule). The motion passed 5-0.
 - b. Add live shrimp to species authorized for transport under the license: Motion was made to adopt amendments to section 7.10(A)(2) as noticed. The motion passed 5-0.
 - c. Add that scallops as prohibited for transportation: Motion was made to adopt amendments to section 7.10(E)(3) as noticed. The motion passed

4-0-1 (one abstention)

- d. Add a new section that specifies that the direct sale of oysters, clams, mussels, and roe-on scallops is prohibited: Motion was made to adopt amendments to section 7.10(E)(4) as noticed. The motion passed 5-0.
 - e. Add that shrimp must be sold live: Motion was made to adopt amendments to section 7.10(F)(5) as noticed. The motion passed 5-0
 - f. Add that transportation is limited to live crabs, live shrimp, and live whelk: Motion was made to adopt amendments to section 7.10(F)(6) as noticed. The motion passed 4-0-1 (one abstention).
 - g. Add storage and handling requirements for scallops: Motion as made to adopt amendments to section 7.10(F)(7) as noticed. The motion passed 5-0.
 - h. Add that scallops may be “processed” in accordance with RIDOH regulations: Motion was made to adopt amendments to section 7.10(F)(8) as noticed. The motion passed 5-0.
- Marine Fisheries: Support to adopt the proposed rule change as noticed, and with the change recommended by the Council regarding proposed amendments to section 7.10(A)(1) that language “shucked adductor meat only” be added to final rule. The Division believes this amendment will be very positive for industry with additional species authorized under the license.

7. **Dockside Sales Endorsement:**

- Background/Issue: All activities authorized by the Dockside Sales Endorsement are currently also authorized by the Direct Sales Dealer License, however there are other activities also authorized by the Direct Sales Dealer License that are not authorized by the Dockside Sales Endorsement, thus rendering the Dockside Sales Endorsement unnecessary and obsolete. Other issues with the Dockside Sales Endorsement include the following:
 - The marine species currently authorized is limited to live lobsters and crabs
 - Whelk is not currently authorized; often a point of confusion
 - Endorsement holders are required to sell dockside to final consumer only (i.e., the individual(s) who will be consuming the product). The endorsement does not authorize sale directly to restaurants.
 - The endorsement does not authorize transport of products to the consumer.
 - Reporting may only be completed via the Dockside Sales Endorsement Logbook; electronic reporting is not available. This reporting method creates a lag in availability of activity and a significant administrative burden to the Division:
 - Reporting data is not uploaded until May of the following year, which impacts the fishermen’s ability to demonstrate activity standard in a timely manner

- This reporting method is inconsistent with federal requirements for federal vessels which requires a federal dealers license to sell dockside
- Printing and mailing paper logbooks
- Entering data into SAFIS from the paper logbook
- Illegible paper reports
- Mailings and phone calls to endorsement holder's delinquent in reporting. Most endorsement holder do not use the endorsement (of 278 endorsements issued in 2023, 43 reported at least one landing) and neglect to provide negative reports as required by rule. As a condition of license renewal, reporting must be completed for the prior year.
- Proposed rule: Division proposal to delete all language associated with this rule and end its issuance.
- Public comment: None provided.
- RIMFC: 5 – 0 in support to strike all elements of the Dockside Sales Endorsement from rule (i.e., the endorsement would no longer be available for issuance) and direct the Division to investigate any unintended consequences with transitioning these endorsement holder to the Direct Sales Dealers License (e.g., reporting) at a subsequent regulatory cycle in 2025.
- Marine Fisheries: Support to adopt the proposed rule change as noticed. The Division agrees to solicit public input on unintended consequences with transitioning from the Dockside Sales Endorsement to the Direct Sales Dealer License (e.g., reporting) at a future regulatory cycle in 2025 as recommended by the Council.