



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

To: Scott Olszewski, Acting Chief

From: Terrence Gray, P.E., Director

Date: December 17, 2024

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

I have received and reviewed your memo to me, dated December 6, 2024 (attached), regarding the regulatory matters that were subject of a public hearing held on November 6, 2024, and RI Marine Fisheries Council meeting held on December 2, 2024. The final decision for each regulatory matter is as follows:

1. **2025 Commercial Tautog management/Summer/Fall Aggregate Program - Tautog:**

Decision: Maintain the management of Tautog as it currently is in regulation; status quo. DEM supports aggregate programs in general and recognizes their value to the industry and the resource by way of mitigating the need to discard. However, adding Tautog to the aggregate program is complicated, as demonstrated by the Council's tie vote and the public's very disparate comments on whether to approve this concept or not. The tied vote denotes no advice from the Council, and I am very hesitant to move forward with a large management change without that advice. I will also note given the life history characteristics of tautog as a slow growing, long lived species, it is very important to get our management correct, as recovering from management mistakes can take decades. Acknowledging the concerns from the Council members, industry, and the Division of Law Enforcement, I direct the Division to make no changes to how Tautog is currently managed. As a final note, the majority of the comments supported a weekly limit outside of an aggregate program, but I would not be supportive of that, were we ever to move towards this type of management for tautog. We would need to closely monitor this species and therefore include it in the aggregate program with all its existing requirements.

2. **Summer/Fall Aggregate Program – Non-Compliance Provisions and General Clarifications:**

Decision: DEM recognizes the importance of the Council’s recommendation to increase the time frame a vessel may not be eligible for participation in the Summer/Fall Aggregate Program. However, as the recommendation of the Council regarding the ineligibility is significantly different than the noticed rule, I remand this back to the Division to solicit additional public comment. This will ensure there are ample opportunities for the public to weigh in on this change.

3. **Blue crab management:**

Decision: Amend the rule as noticed and both recommended by the Council and supported by the Division. DEM recognizes this may be an opportunity to afford underserved communities around Rhode Island access to more affordable seafood. Acknowledging the Division of Law Enforcement’s concern about the potential for violations, I direct the DEM Communications, the Division of Fish and Wildlife Aquatic Resource Education program, and RI Seafood to conduct a statewide public awareness campaign regarding the changes to this regulation.

4. **Providence River Shellfish Management Areas/Conditional Area “E” commercial shellfish harvest schedule:**

Decision: Amend the rule as recommended by the Council and supported by the Division for the winter 2025 shellfish harvest schedule.

5. **Foster Cove Closed Areas (Ninigret Pond Shellfish Management Area):**

Decision: Amend the rule as recommended by the Council and supported by the Division for Foster Cove.



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To: Terrence Gray, P.E., Director

From: Scott Olszewski, Acting Chief

Date: December 6, 2024

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

A public workshop was held on October 3rd to solicit feedback on proposals being considered by the Division and to provide opportunity for additional proposals. Proposed amendments to the RI Marine Fisheries regulations were then publicly noticed on October 16, 2024, with a public hearing held on November 6, 2024, followed by a RI Marine Fisheries Council meeting on December 2, 2024. Below is a summary of the proposed amendments and the Division's recommendation for the final rules to be filed.

1. **2025 commercial tautog management:**

- **Background:** Annual review of the finfish species rules (Part 3 – Finfish) and solicitation for proposals for rule amendments.
- **Proposal/noticed rule:** An industry proposal was received by the Division to amend the possession limit for each of the sub-periods from 10 fish per day to 50 fish per week. Note: A similar industry proposal was received by the Division to add tautog to the Summer/Fall Aggregate program (see item # 2 below). These alternate proposals are mutually exclusive and should not be adopted together.
- **Public comments:** A mix of opposition and support for a weekly possession limit for tautog and/or inclusion of tautog into the Summer/Fall Aggregate Program.
- **RIMFC:** This matter was not specifically voted on, in lieu of the recommendation provided in item #2 below regarding inclusion of tautog into the Summer/Fall Aggregate Program.
- **Marine Fisheries:** The Division supports status quo for the 2025 commercial tautog fishery (please see items # 2 below regarding inclusion of tautog into the Summer/Fall Aggregate Program).

2. **Summer/Fall Aggregate Program - Tautog:**

- Background: Industry proposal received to add tautog to the program.
- Proposed rule: An industry proposal was received by the Division to add tautog to the program with the following stipulations:
 - The commercial possession limit for tautog would be 5X the daily limit (as opposed to 7X the daily limit for black sea bass and summer flounder).
 - The 85% closure trigger (i.e., when the program closes and possession limits revert back to daily) that currently applies to black sea bass and summer flounder would not apply to tautog.
 - Note: A similar industry proposal was received by the Division to amend the commercial possession limit for tautog for each of the sub-periods from 10 fish per day to 50 fish per week (see item # 1 above). These proposals are mutually exclusive and should not be adopted together.
- Public comments: A mix of opposition and support for a weekly possession limit for tautog and/or inclusion of tautog into the Summer/Fall Aggregate Program.
- RIMFC: A motion failed on a vote of 2-2 to recommend adding tautog to the program with a possession limit of 50 fish per week from May 1 through May 31 and from October 15 through December 31, with a trigger limit of 80% of the sub-period quota. A daily possession limit of 10 fish per day would apply when the fishery is open April 1- April 30 (i.e., prior to the opening of the Summer/Fall program on May 1). No additional motions were made.
- Marine Fisheries: DMF is generally supportive of aggregate programs due to industry flexibility and discard reduction, and have been successful with both summer flounder and black sea bass management. In the case of tautog however, managing quota and preventing sub-period harvest overages is more challenging due to a significantly lower total allowable catch. While the Council attempted to address this concern by voting to remove the summer sub-period and its low allocation (i.e., 15% vs. 42.5% for the other two sub-periods) from the program, the low overall TAC presents a challenge to the Division to react to varying catch rates and effectively close the fishery and prevent harvest overages, which would be exacerbated with a weekly possession limit. It should also be noted that comments were split among sectors, with the commercial rod and reel sector opposed, and fixed and mobile gear sectors supportive. Considering the Council motion differed from the majority of comments received, and that the vote was split and therefore failed, the Division supports status quo for the 2025 commercial tautog fishery.

3. **Summer/Fall Aggregate Program – Non-Compliance Provisions and General Clarifications:**

- Background: Division review of the rule.
- Proposed rule: Division proposal to 1) clarify the time period when the

aggregate is authorized; 2) amend non-compliance provisions; and 3) clarify the closure trigger for black sea bass and summer flounder.

- Public comments: No comments received.
- RIMFC: The proposed clarification to the time period when the aggregate is authorized, and the clarification to the closure trigger for black sea bass and summer flounder, passed by consent (i.e., no objection to recommending adoption of the proposed language). Regarding the proposed amendment to the non-compliance provision, a motion passed 4-0 to recommend that the language noticed be revised to read “*Non-compliance with the provisions of these Regulations or the permit agreement may result in the vessel not being eligible for participation for the ~~remainder of the calendar year~~ following three years.*”
- Marine Fisheries: Support for the Council recommendation with the additional language regarding the length of time that a vessel may be removed from the program.

4. **Blue crab management:**

- Background: The nighttime harvest of blue crab was previously prohibited in statute; however, this statute was recently amended to remove this prohibition. This prohibition is also provided for in the current rule (Part 5-Lobster, Crabs, and Other Crustaceans).
- Proposed rule: A stakeholder proposal was received by the Division to remove the nighttime prohibition from rule now that the prohibition has been removed from statute. In response to this proposal, the Division also included in the noticed rule a proposed amendment to modify the possession limit from unlimited to 25 crabs/person/day for gear types other than pots, such that the possession limit would be 25 crabs/person/day for all harvest methods and gear types.
- Public comment: 2 comments provided in support of the proposed rule as noticed. Opposition from the Division of Law Enforcement (written comment provided)
- RIMFC: 3-1 in support of adopting the proposed rule as noticed.
- Marine Fisheries: Support to adopt the proposed rule change as noticed. In particular, the Division supports the proposed amendment to the possession limit due to potential increase in harvest effort, which is felt to be warranted as a cautionary approach due to the current stability of the stock under current harvest levels. The Division notes and appreciates the concerns expressed by the Division of Law Enforcement, however, feels that consistency with blue crab management in neighboring states, and the reduced possession limits should be considered at this time.

5. **Providence River Shellfish Management Areas/Conditional Area “E” commercial shellfish harvest schedule:**

- Background: An industry proposal was received by the Division to amend the winter 2025 (Jan. 1 – April 30) shellfish harvest schedule, which was then brought before the Council’s Shellfish Advisory Panel at their meeting on November 13th.
- Proposed rule: The SAP voted 9-0 to recommend the following schedule: Area E will be open one (1) weekday each week from 8:00 A.M. until 10:00 A.M. on the first available weekday that is not closed due to water quality impairment during the following weeks:
 - February 10 through 14
 - February 24 through 28
 - March 10 through 14
 - March 24 through 28
 - April 7 through 11
 - April 21 through 25
- Public comment: 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 both the SAP and Council meetings. No comments or alternative proposals were received.
- RIMFC: 4-0 in support of adopting the proposed rule as recommended by the SAP.
- Marine Fisheries: The Division does not object to adopting the rule as recommended by the Council, however, it should be noted that this potential increase in effort carries additional risk by beyond the buffer built into the management approach.

6. **Foster Cove Closed Areas (Ninigret Pond Shellfish Management Area):**

- Background: Two areas in Foster Cove (sub-areas 1 & 2) were established in 2016 as oyster spawner sanctuaries and closed to harvest. This initial closure was continued in 2020 to the current expiration date of January 1, 2025. The Division continues to monitor oyster resources, including former enhancement sites in this cove.
- Proposed rule: Division proposal to expand the area of Sub-area 1 for continued protection of oyster spawning stock and enhancement efforts, with an expiration date of April 15, 2028; and to extend the expiration date for Sub-area 2 until April 15, 2025, at which time the area would reopen to harvest. The area of the expanded Sub-area 1 would encompass the entirety of the northwest section of the cove (map provided in Council presentation). The Division supports re-opening Sub-area 2 as the closure is not functioning as intended as an oyster spawning sanctuary.

- Public comment: 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, however opportunity for public input was provided at both the SAP and Council meetings. No public comment was provided.
- RIMFC: 3-1 in support of adopting the Division recommendation, which would amend the area of Sub-area 1 with an expiration date of the closure to April 15, 2028; and extend the closure of sub-area 2 until April 15, 2025.
- Marine Fisheries: Support to amend the rule as recommended by the Council. The Division will continue to monitor the closed area and present findings and further recommendations prior to the expiration date. The Division notes the amended expiration dates can be filed at this time with an anticipated effective date of January 1, 2025; the amended area of Sub-area 1 to be filed at a later date with an anticipated effective date of May 1, 2025.