



Rhode Island  
Department of Environmental Management

**DIVISION OF FISH AND WILDLIFE**

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TO: Janet L. Coit, Director DEM  
FROM: Mark Gibson, Deputy Chief for Marine Fisheries, DFW  
DATE: July 12, 2012  
SUBJECT: Request for Decision on remainder of the April 3, 2012 Marine Fisheries Hearing Items

Proposed regulatory changes pertaining to (1) incorporating new definitions into Part I – Legislative Findings, (2) Part VI – Dredging for Shellfish - to address harvest methods by clarifying dredging regulations and identifying applicable marine species, (3) Part XVIII – Shellfish Grounds - to prevent the operation of devices capable of harvesting shellfish in polluted areas, (4) Part III – Marine Fisheries Council - to establish Marine Life Management Areas, (5) Part IV – Shellfish - to clarify what species may be harvested under a shellfish dredging license, (6) the Spiny dogfish management plan, (7) Part III – Marine Fisheries Council - to allow more flexibility to adjust seasons in order to effectively comply with federal fishery management plans, as well as update regulatory citations for consistency with certain statutory changes, have moved through the regulatory process and are hereby presented for final decision.

These matters were the subject of a public hearing held on April 3, 2012 and subsequent consideration by the RI Marine Fisheries Council (RIMFC) at their May 7, 2012 meeting. Supporting documentation submitted along with this memorandum include the, public hearing summary documents, summary of public hearing comments, and the applicable portion of the minutes from the RIMFC May 7, 2012 meeting. Items 1 through 5, relating to shellfish harvest methods and habitat impacts were addressed at several RIMFC Shellfish Advisory Panel meetings: June 22, 2011, July 15, 2011, September 7, 2011, and January 11, 2012. The proposed changes are summarized below.

*Having reviewed the entire record, and conferred with staff, I hereby urge adoption of the proposed changes as noted below. If you concur, please indicate by signing this memo at the end and returning it to me. Upon receipt of the signed memo, I will initiate the filing process. If you wish to make any changes that differ from those proposed, please delineate those changes via a separate memo.*

**Incorporating new definitions into Part I – Legislative Findings, and update regulatory citations for consistency with certain statutory changes:**

There were five new definitions proposed to address harvest methods and habitat impacts: Air-assisted harvest, Bay scallop dredging, Bycatch, Permitted shellfish dredging, and Water-assisted harvest.

There were no comments offered at the public hearing on this item. The Division recommended adoption of the new definitions. At the May 7, 2012, RIMFC meeting the Council recommended adoption of the new definitions as follows: (1) air-assisted harvest, bay scallop dredging, and water-assisted harvest; (2) use the RI Fishermen’s Alliance definition for “bycatch”; (3) remove the comma after the word “water” and remove the word “or” in the definition for water-assisted harvest; and (4) in a separate motion the Council recommended that the Director apply the Council comments and recommendations from all the items discussed to this definition “Permitted shellfish dredging” for consistency.

*As supported by the Council, and the Division, I agree with the Council recommends for Part 1 - Legislative Findings; Air-assisted harvest, Bay scallop dredging, and Water-assisted harvest. However, I do not agree with the Council recommendations to use the RI Fishermen’s Alliance definition for “bycatch”. Instead I recommend the Division review the bycatch definition in context of the current Magnuson-Stevens definition for consistency. With regard to the “permitted shellfish dredging” definition, I recommend deletion. It is not necessary and the species permissible for dredging are covered in other sections and subject to change. I also recommend the updates to regulatory citations for consistency with certain statutory changes in Part 1 as proposed by legal counsel.*

**Part VI – Dredging for Shellfish - to address harvest methods by clarifying dredging regulations and identifying applicable marine species, and update regulatory citations for consistency with certain statutory changes:**

Amendments were proposed for Sections 6.1 through 6.6 to clarify the dredging regulations and identify applicable marine species that can be harvested with a dredging license. The proposed changes would clarify existing regulations governing commercial/recreational harvest methods for marine species. The recommended rule changes are in response to harvest activities that fall outside existing categories either based upon intended target species or intent of existing harvest method language. Language omitted from the current regulations allow the pursuit of unregulated species (e.g.: razor clams, mantis shrimp, worms, etc.) in direct proximity to regulated species and the harvest of regulated species as bycatch (i.e., horseshoe crabs, and whelk). This makes enforcement and proper management problematic. The proposed regulation changes are not intended to interfere with any legitimate net fishery or shellfish dredging fishery. The intent is to clarify what species of shellfish are permissible under existing marine fisheries regulations and make modifications where appropriate.

The RIMFC Shellfish Advisory Panel (AP) supported the proposal conceptually but offered no specific recommendations or language for Part VI. There were no comments offered at the public hearing on this item.

The Division recommends adoption of Part VI restrictions. The proposed amendments would clarify and reinforce that the only species that may currently be harvested via dredge are blue mussels, ocean quahogs, and surf clams. This specificity would reduce any incentive to “prospect” for other species via dredging. This method of harvest could potentially be detrimental to essential fish habitat and fishery productivity. Until such time as a comprehensive marine life management area for Narragansett Bay habitats has been established, dredge fishing should remain limited.

At the Council meeting, the Council recommended to oppose the proposed regulatory amendments in Sections 6.1 through 6.6 of Part VI – Dredging for Shellfish. While they

understood and were in support of the intent of the proposed amendments they felt the Division needed to review the language and make modifications that would further clarify the regulations.

*The Council opposed the proposed amendments but understood the intent of the amendments. The Division considers protecting fisheries habitat and fishery productivity in Narragansett Bay an important issue, and as mentioned in the summary above, the intent of this proposed regulatory change was to achieve protection of important habitats, and not to unduly impact any legal and legitimate fishing operation. After further consideration, the concept of continuing to track and update this proposed regulation to account for these various legal and legitimate fisheries and the potential unintended consequences that the proposal could create a significant burden over time. Given the public and Council comment that centered around this item the Division recommends that this proposed change be held in abeyance until further information is available through projects like the Narragansett Bay Habitat Mapping Project to allow the Division to craft a regulation that specifically targets the habitat issues that are the original intent of this proposed change. Updating the regulatory citations for consistency with statutory changes could still be promulgated without any negative impact, so the Division recommends that these be carried forward.*

**Part XVIII – Shellfish Grounds - to prevent the operation of devices capable of harvesting shellfish in polluted areas, and update regulatory citations for consistency with certain statutory changes:** Amendments were proposed for Sections 18.6 and 18.10.

The Shellfish AP supported the proposal conceptually but offered no specific recommendations or language for Part XVIII. At the public hearing the RI Shellfishermen’s Association, voiced concerns whether the proposed amendments would impact the shellfish transplant program where they annually transplant shellfish from closed waters into clean waters using bullrakes and tongs.

The Division recommended adoption of Part XVIII restrictions. The proposed amendments would add the harvest methods newly defined in Part I – Legislative Findings, to the prohibited list. Water and air assisted harvesting are known methods and failure to include those as prohibited in polluted areas will undermine enforcement of those areas and create risks to public health. To address industry concerns about annual shellfish transplants, the Department has the authority to conduct transplants across pollution lines therefore the proposed amendments would not affect the shellfish transplant program.

The Council recommended adoption of the amendments to Part XVIII – Shellfish Grounds, with a modification to the words in section 18.6 “capable of harvesting” which should be examined and changed to more closely meet the intent.

*As supported by the Council and the Division, I recommend adoption of the Part XVIII – Shellfish Grounds amendments with the suggested modification to the wording for “capable of harvesting” as offered by the Council. I also recommend the updates to regulatory citations for consistency with certain statutory changes to Part XVIII as proposed by legal counsel.*

**Part III – Marine Fisheries Council - to establish Marine Life Management Areas:** These proposed changes would establish Marine Life Management Areas in Narragansett Bay, Little

Narragansett Bay, and all the coastal ponds to facilitate spatial management of fisheries and fish habitats.

At the public hearing the RI Shellfishermen's Association did not support the proposed language. They were under the impression the Division was going to take a slower approach and only work on certain areas, but the proposal seemed much broader than what they had anticipated. Also, a member from the RI Commercial Rod and Reel Association (RICRRA), voiced concerns with the proposed language changes. He expressed concern about deleting language from section 3.4 regarding Shellfish and Marine Life Management Areas which he perceived would remove the Council from the decision process and was opposed to the amendments.

At this time the Division recommends holding the Marine Life Management Areas (MLMA) for Narragansett Bay, the coastal ponds, and Little Narragansett Bay in abeyance. While our vision of a comprehensive, habitat and fishing activity based marine life designation for Narragansett Bay and our coastal salt ponds was a sound one, the proposal was insufficiently developed at this point. Section 3.6 already contains a lengthy list of shellfish, gear, and species management areas. It was not clear how an overarching MLMA designation would align with current fine-scale designations. The Division will continue to work on the concept to eliminate redundancies, review existing areas, specify any new sub areas anticipated, and release a plan for public and RIMFC review at a later date.

The Council agreed with the Division's recommendation to hold off on establishing Marine Life Management Areas at this time.

*With the support of the Council, I recommend holding off on establishing Marine Life Management Areas at this time until the Division has more time to sufficiently develop a more comprehensive proposal.*

**Part IV – Shellfish - to clarify what species may be harvested under a shellfish dredging license, and update regulatory citations for consistency with certain statutory changes:**

Amendments were proposed for Sections 4.1.3 and 4.5.

During the January 11, 2012 RIMFC Shellfish AP meeting, there was consensus from the group to support the language provided by J. Grant on behalf of industry. Division staff advised the group that the industry proposed language as written by J. Grant was insufficient to prevent certain harvest methods when in pursuit of unregulated species. The Division of Fish and Wildlife (DFW) proposed language was intended to identify the regulatory deficiencies.

At the public hearing a representative from the RI Shellfishermen's Association stated he did not believe the proposed language in section 4.5 - Methods of Harvest - was the language the Shellfish Advisory Panel (SAP) had crafted when they reviewed this item. He asked that the language that was submitted by industry at the Shellfish AP meeting also be presented to the Council for their consideration. He noted the language they created was simpler than what was being presented by the Division.

The Division recommended adoption of Part IV restrictions. The proposed language put forward by the DFW incorporated the language provided by J. Grant on behalf of industry. These proposed changes are a necessary companion to those for Part VI, restricting the species harvested under a dredging license even though the Council had recommended not adopting the

amendment for Part VI at this time. It has never been the Division's intent to prevent the legitimate harvest methods currently in use. The intent is to prevent the use of certain harvest methods either in sensitive areas or to close loopholes that are not written clearly enough while in pursuit of unregulated species. This would also identify pressurized water and pressurized air as prohibited activities in the open waters in addition to polluted waters.

At the Council meeting, the Council recommended that the Division and the Director apply the Council's prior recommendations that addressed these same issues in Part VI and apply them to the Part IV items. All Parts needed to be consistent and the list of applicable species needed to be expanded to include other species that have been harvested in the past such as whelks, horseshoe crabs, sea scallops, etc.

*As explained in the section concerning the proposed Part VI regulatory changes, the Division wishes to withhold this proposal until additional information becomes available that would allow for a habitat protection targeted proposal to come forward. I do recommend the updates to regulatory citations for consistency with certain statutory changes to Part IV as proposed by legal counsel.*

**Amendments to the Spiny dogfish management plan, and update regulatory citations for consistency with certain statutory changes:** The proposed amendments to the Spiny Dogfish Management Plan would establish Division authority to enter into interstate agreements within the ASMFC Northern management region for purposes of managing the Northern quota in accordance with industry interests using seasonal closures and possession limit adjustments.

At the RIMFC Groundfish & Federally Managed Species Advisory Panel meeting, members worked to formulate proposals for the 2012 and 2013 commercial fishing seasons. There was consensus from the group to pursue proposal #2 for the 2013 fishing year (establish a spring and fall fishery in the Northern Region by creating two sub-periods: Spring: May – Oct and Fall: July – April) as a long-term approach.

At the public hearing a comment was made by a commercial fisherman who had participated at the Groundfish AP meeting who indicated the Groundfish AP members had put a number of proposals together with hope they could maximize the use of this resource. He supported the Division proposed language and felt the short-term proposals proposed by the AP would be highly unlikely to get through for this fishing year. He commented that for long-term he and the AP members had supported proposal #2 (establishing two sub-periods; spring and fall fishery in the Northern Region), then supported proceeding down the list with the other proposals. He also added that industry was aware that because of the timing it was unlikely that any of the proposals would be implemented for the 2012 fishing year.

The Division recommended that the Council endorse the concept of cooperative, New England management of spiny dogfish. A clear message was conveyed from industry that ASMFC "northern region" management was inadequate for Rhode Island needs. It was not clear that a specific enabling regulation was needed but the Council should signal to the Director that more flexibility is needed.

The Council supported the Division and voted unanimously to recommend adoption of amendments to the Spiny Dogfish Management Plan which would allow for more flexibility.



*As supported by the Council and the Division, I recommend adoption of amendments to the Spiny Dogfish Management Plan that would establish Division authority to enter into interstate agreements within the ASMFC Northern management region for purposes of managing the Northern quota in accordance with industry interests using seasonal closures and possession limit adjustments. I also recommend the updates to regulatory citations for consistency with certain statutory changes as proposed by legal counsel.*

**Part III – Marine Fisheries Council - to allow more flexibility to adjust seasons in order to effectively comply with federal fishery management plans, as well as update regulatory citations for consistency with certain statutory changes:** The proposed amendments to Part III increases flexibility for the Division to respond to ASMFC orders including season changes and to conduct quota reallocation between gear types as needed (traps vs. general category). Amendments also redefine the RIMFC advisory role consistence with statute.

At the public hearing a representative from the RICRRA, made comments in reference to section 3.2 - Powers and Duties – indicating it appeared the proposed modifications eliminated the requirement to have issues vetted through a public hearing, and removed authority from the Council. He also commented on section 3.2.1 Adjustments of allocations, seasons, and possession limits, and sub-sections 3.2.1-1, 3.2.1-2, 3.2.1-3, and 3.2.1-4. He noted that the RICRRA was opposed to these changes as written.

The Division recommended adoption of the proposed changes to Part III. The changes reflect the change in status of the Council to an advisory body, thereby aligning regulation with existing statute. The changes also allow the Division more authority to manage quota species when unforeseen consequences occur. These include failure of a gear type (i.e. floating traps) to attain their allotted quota and/or orders from ASMFC to curtail or extend fishing seasons. This measure was not intended to undermine the Advisory Panel/RIMFC process but simply to allow the Division to act quickly when a need arises that was not anticipated by the Council and Advisory Panels.

The Council supported the Division and voted to recommend adoption of Part III amendments.

*As supported by the Council and the Division, I recommend adoption of the amendments in Part III as proposed as well as updating regulatory citations for consistency with certain statutory changes as proposed by legal counsel.*

**Time Sensitivity** – None



**Approved for filing as presented**

  
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Janet L. Coit, Director

  
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Date