



RHODE ISLAND

DEPARTMENT OF ENVIRONMENTAL MANAGEMENT

OFFICE OF THE DIRECTOR

235 Promenade Street, Room 425
Providence, Rhode Island 02908

To: Jason McNamee
Chief, Marine Resource Management

From: Janet Coit, Director

Date: November 3, 2016

Re: Final Decisions Pertaining to September 13, 2016 Marine Fisheries Public Hearing Items

I have received and reviewed your memo to me, dated October 20, 2016 and attached herewith, regarding the public hearing items from the September 13, 2016 public hearing. With that memo, I have also received and reviewed all relevant supporting documentation, including the September 13, 2016 public hearing documents and public comments received, as well as the summary report from the October 3, 2016 meeting of the RI Marine Fisheries Council (RIMFC).

I hereby approve all of the recommendations, as set forth in your memo. With one clarifying exception pertaining to item 5, explained herein, all of your recommendations are consistent with the recommendations of the RIMFC, rendered at their October 3, 2016 meeting. The specific regulatory items, and the final decisions for each are as follows:

1. **Licensing Regulations - Exit/Entry Ratio for the Restricted Finfish Endorsement**
(Section 6.1-10(a)):

- Decision: Adoption of amended regulation, as proposed, which maintains the current 1:1 ratio, but applies it to all “*eligible*” licenses that retire during prior year, rather than just the eligible and *active* licenses that retire during prior year.

2. **Licensing Regulations - Exit/Entry Ratios for Quahaug and Soft-Shell Clam Endorsements; Availability of Whelk and Shellfish-Other Endorsements** (Sections 6.1-10(b),(c); Section 7.3(b); Section 7.8):

- Decision: Status quo.

3. **Licensing Regulations - Issuance of New Licenses upon Sale of Vessel and Gear** (Section 6.7-8):

- Decision: Adoption of the amended regulation, as proposed, which authorizes the issuance of a new license to a Rhode Island resident who purchases a “*vessel and/or gear*” from a seller who has been actively fishing his/her license and surrenders it to the Department. The new regulation replaces the former provision that required the sale of a “*vessel and gear.*”

4. **Licensing Regulations – Activity Standards (Section 6.7-11):**

- Decision: Adoption of the amended regulation, as proposed, which requires at least *40 days* of activity during the prior two calendar years to meet the actively fishing and actively participating standards. The new regulation replaces the former provision that required at least *75 days* of activity during the prior two calendar years.

5. **Licensing Regulations – Issuance of New Licenses and Operator Permits Under Hardship Conditions (Section 6.7-9):**

- Decision: Adoption of amended regulations pertaining to the issuance of a new licenses and operator permits under hardship conditions, which:
 - 1) Liberalize the actively fishing standard for a hardship, as defined under Subsection 6.7-9(a), by basing it on the activity status of the license holder at the time of hardship, *or on January 1 of the following year; or based on activity spanning two consecutive calendar years dating back to 2006;*
 - 2) Extend the timeframe during which a new license may be issued to a family member (RI resident) of an actively fishing license holder who died or became permanently incapacitated to include *the current or next two calendar years following the death or establishment of permanent incapacity, or in the event of death, upon the settlement of probate* (amending Subsection 6.7-9(c)); and
 - 3) Extend the timeframe during which a temporary license or operator permit may be issued to a designated RI resident, upon the death or permanent incapacity of an actively fishing license holder to include *the current or next two calendar years following the death or establishment of permanent incapacity, or in the event of death, upon the settlement of probate* (amending Subsection 6.7-9(d)).
- Comment:
 - Several concerns associated with Section 6.7-9 were raised during the public comment period and the Council’s review. One pertained to the appropriateness of maintaining an activity standard as a basis for qualifying for hardship status. Another pertained to the inability to meet the activity standard if a hardship occurs during the second year of a two-year qualifying period. Another pertained to the need to afford adequate time to address licensing issues following the death or permanent incapacity of a license holder. And another pertained to the need for a more liberal application of the activity standard for license holders who die

or become permanently disabled, and actively fished historically, though not during the two years prior to the onset of the hardship.

- The Council's preferred recommendation was to delete the activity standard entirely. However, recognizing that the need to maintain consistency with statutory provisions might obviate that recommendation, the Council offered a fallback recommendation, urging adoption of a two-year extension clause.
- Subsequent review of the governing statute – namely, RIGL Section 20-2.1-5 -- reveals that the activity standard must apply as part of the qualifying criteria for a hardship condition. However, the review also indicates that there is flexibility regarding the timeframe upon which the activity standard may be based. Accordingly, consistent with the Council's and the public's interest in liberalizing the activity standard as it applies to hardship cases under Section 6.7-9, I have decided to adopt the three decision points set forth above, and hereby call upon staff to develop final regulatory language that comports with the three points.

6. Amendments to RIMFR *Part 1 – Definitions*:

- Decision: Adoption of amended regulations, as proposed, which further consolidate all definitions in the marine fisheries regulations under Part 1, clarify several definitions pertaining to licensing, delete some terms not used in regulation, and add some terms that are used in regulation.



RHODE ISLAND
DEPARTMENT OF ENVIRONMENTAL MANAGEMENT
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INTER-OFFICE MEMO

TO: Janet Coit, Director

FROM: Jason McNamee, Chief

DATE: October 20, 2016

SUBJECT: Request for decisions regarding proposed amendments to the RI Marine Fisheries regulations that were the subject of a public hearing conducted on September 19, 2016, and deliberated by the RI Marine Fisheries Council at their meeting on October 3, 2016.

1. **Licensing Regulations - Exit/entry ratio for the Restricted Finfish Endorsement:**

- **Background:** At their meeting on August 23rd, the IAC expressed concern about an aging population of active commercial fishermen and the need to promote greater access so as to maintain the commercial fishing industry.
- **IAC:** Maintain 1:1 ratio, however for “*eligible*” licenses rather than “*active*” licenses as regs currently require. Net result would be 15 new endorsement opportunities rather than 3.
- **Options presented at hearing:**
 - **Option 1:** Status quo - Maintain status quo for all endorsement categories.
 - **Option 2:** IAC proposal.
- **Public comments:** 2 comments in support of option 2.
- **Council:** Motion passed 7 – 0 in favor of option 2.
- **Marine Fisheries:** Support for option 2. For future analysis, the Division will assure that additional license opportunities are provided based on the fishery the retired license had activity in (e.g., if MPURP License was only active in the quahaug fishery, then offer PEL with quahaug endorsement, not full MPURP license).
- **Timing to file:** Immediately

2. **Licensing Regulations - Exit/entry ratio for all Shellfish endorsements (i.e., Bay Quahaug; Soft-shell Clam, Whelk, and Shellfish Other endorsements):**

- **Background/IAC:** Maintain status quo for all shellfish endorsements
 - **Bay Quahaug:** 1:1 (results in 39 new endorsements opportunities).
 - **Soft-shell Clam:** 5:1 (results in 9 new endorsements opportunities).

- Whelk: No new Whelk endorsements available; open entry only to PEL or CFL w/Quahaug or SS Clam endorsement
- Shellfish Other: Open entry
- Options presented at hearing:
 - Option 1: Status quo - Maintain status quo for all endorsement categories.
- Public comments: No comments.
- Council: Motion passed 7 – 0 in favor of option 1 status quo.
- Marine Fisheries: Support for status quo.
- Timing to file: Immediately

3. **Licensing Regulations - Proposed amendments regarding the Issuance of New Licenses upon Sale of Vessel and Gear (section 6.7-8):**

- Background: Proposal initiated from Licensing office.
 - Proposed clarification of requirements regarding the sale of a fishing business resulting in issuance of a new commercial fishing license.
 - Currently 75 landings/previous 2 years to meet the activity standard tied to both the commercial fishing license and vessel involved in the sale.
 - Regulation is vague and results in applicants attempting to conduct a transaction involving a vessel which does not meet the activity standard. Those transactions are denied initially but often end up in the RIDEM Administrative Adjudication Division; RIDEM proposes to make vessel requirement less restrictive to reduce the number of these cases.
 - New regulation would not require landings history used for activity standard to be linked to the vessel involved in the sale.
 - Vessel involved in the sale must have been registered and commercially declared with RIDEM during the period used to meet activity standard.
- IAC: Remove all criteria associated with the sale of a business
- Options presented at hearing:
 - Option 1: Status quo - Maintain current language regarding the sale of the business.
 - Option 2: Noticed language - Vessel involved in sale must have been registered and commercially declared during period of use
 - Option 3: Division proposal to loosen requirement based on recommendation from IAC and consideration of statutory requirements:
 - Division review of statute would appear to not allow for the direct sale of the licenses as it is not a property right; any transaction requires the transfer of gear **or** a vessel with the license (RIGL 20-2.1-4(c))
 - However, the statute (20-2.1-5(3)(ii)) is ambiguous in that the issuance of a new license requires a *vessel **and/or** gear* as part of the transaction; it does not specifically require a vessel as part of the transaction.
- Public comments:
 - Town Dock: In support of IAC proposal to remove all criteria.
 - RIFA: Opposed to option 2.
 - Oral comments: 4 persons in support of option 3.
- Council: Motion passed 7 – 0 in favor of option 3.
- Marine Fisheries: Support for option 3.

- Timing to file: Immediately

4. **Licensing Regulations – Proposed liberalization of the Activity Standards Activity Fishing and Actively Participating (section 6.7-11)**

- Background: Division proposal to liberalize activity standards in order to improve transfer of license.
- Options presented at hearing:
 - Option 1: Status quo – 75 landings/2 years.
 - Option 2 - Division proposal:
 - Actively Fishing (fisherman): (~~75~~ **40**) days/2 years.
 - Actively Participating (crew member): (~~75~~ **40**) days/2 years.
- Option 3 - IAC proposal: Remove the activity standard entirely as it applies to sale of business or transfer to family member/crew; but maintain it as it applies to the prioritization for issuance of new licenses.
- Public comments: 4 written comments in support of option 3.
- Council: Motion to recommend adoption of option 3 failed 2 – 5 (*M. Roderick* and *B. Macintosh* in support). Motion to recommend adoption of option 2 passed 6 – 1 (*M. Roderick* opposed).
- Marine Fisheries: Support for Council recommendation.
- Timing to file: Immediately

5. **Licensing Regulations - Issuance of New Licenses and Operator Permits Under Hardship Conditions (section 6.7-9):**

- Background: Council member/IAC proposal to liberalize this restriction in order to provide for greater ease to maintain the license for family/crew member under hardship conditions.
 - Under current rule, if the license is not renewed during the calendar year when fishing ceased, the licensee is no longer considered to be “active” and cannot be renewed.
 - Proposed amendments would allow license to be issued during the year following establishment of hardship provisions as well as preserve the licenses activity.
- IAC: In the event of hardship issuance of license, allow 2 years from the time of hardship or settlement of probate to re-issue license to family/crew member. The activity standard would not apply in these cases.
- Public comments: 4 oral comments in support of proposal.
- Council: Motion passed 7 – 0 in favor of the proposal. A 2nd motion also passed 7 – 0 if legal review determined that some activity need apply.
- Division: Support of Council recommendation.
- Timing to file: Immediately

6. **Proposed amendments to RIMFR Part 1 – Definitions:**

1. Background: Division proposal to accomplish the following:
 - Re-location of terms from Licensing regulations to *Part 1 - Definitions* in order to house all terms in a single location.
 - Proposed clarification of several terms.

- Proposed removal of terms not used in RIMFR.
- Proposed addition of several terms found in statute.
- Proposed addition of terms commonly used in RIMFR.
- Amend “Actively Fishing” and “Actively Participating” dependent upon outcome of hearing item 1d.
- Need to amend “Land/landing” due to inconsistency as used in Licensing and Part 1
- Full review of terms as defined and used in RIMFR is on-going.
- Public comments: No comments.
- Council: Motion passed 7 – 0 in support of amendments as proposed.
- Division: Support as proposed.
- Timing to file: Immediately