

RHODE ISLAND MARINE FISHERIES COUNCIL
Minutes of Shellfish Advisory Panel
January 11, 2012 4:30 pm
Fort Wetherill Marine Laboratory, Jamestown, RI

MFC Members Present: J. Grant (Chair)

SAP Members Present: R. Bercaw, W. Blank, J. Gardner, D. Goebel, O. Kelly, G. Schey, M. McGiveney, J Vivari (alt)

Scientific Advisor: D. Leavitt

Public Present: C. Biddle, E. DiBello, J. Dibello, R. Hopkins, C. Jackson, M. Garrahan, W. Garrahan, K. Hess, P. Larson, R. Roach, D. Roebuck, A. Silkes, W. Silkes, D. Sipperly, J. West, W. Westall

CRMC: D. Beutel

DEM Fish and Wildlife: D. Erkan, P. Duhamel

Old Business:

1) Mark Gibson outlined his goals on the “Detrimental Harvest Methods” issue. There is no intention to create a “marine sanctuary”. The intent is to create a designation for Narragansett Bay, the coastal ponds and Little Narragansett Bay that can better manage harvest methods employed. Certain harvest techniques may be inappropriate in sensitive habitats while causing minimal impacts in other areas. The designation would allow the Division to work with the SAP and MFC to identify areas of concern, facilitate appropriate harvest methods, and discourage inappropriate methods. The intent would be to get the proposal to a public hearing after working with the advisory panel. Fishing techniques, efficiency,

Gardner raised concerns about bird predation (cormorant). Gibson noted that concerns raised could be brought to the attention of his superiors.

Gibson noted ongoing side-scan sediment mapping being conducted by John King, from URI. The work would aid in identifying sensitive habitats and improve precision when combined with shellfish survey data, finfish survey data, submerged aquatic vegetation, and other

“Area-appropriate-harvesting” regulations could be developed and implemented a information becomes available with SAP and RIMFC advice.

Gardner read a personal letter recommending a moratorium on new shellfish regulations (see attached) and an email from Rheault listing concerns about the term “detrimental harvest methods”. West also voiced opposition to the term “detrimental harvest”.

Erkan reiterated that it has never been DFW’s intention 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 the “loopholes” that are not written clearly enough while in pursuit of unregulated species. “Except as provided” would allow the legitimate harvest methods to continue. The public hearing process would help identify those methods and areas, where the appropriate methods should continue.

A motion was made supporting the regulatory language provided by Grant. Erkan noted that as written, the language provided by Grant is insufficient to prevent certain harvest methods when in pursuit of unregulated species. The Fish and Wildlife document is intended to identify the regulatory deficiencies.
No vote was taken by the SAP. The SAP consensus was to support the language provided by Grant.

A proposal will be brought to public hearing in the future with consideration given to the issues raised.

McGiveney identified issues for future discussion: transplant funding, Greenwich Bay transplant biomass, reconfiguring closed areas,

New Business:

1) The SAP considered CRMC Aquaculture Lease Application **2011-11-016, P. Larson, Dutch Harbor / Sheffield Cove, Jamestown**. Beutel and Larson outlined a proposal to raise oysters and quahaugs “for educational purposes”. The nursery would be located in Sheffield Cove (permanent closure) and the “grow-out” would be located in Dutch Harbor (subject to seasonal closures) with three long lines and quahaugs under a tent, the combined total of 1000 ft² (for 3 years). The intent is to document the project for educational purposes. Access from Ft. Getty Dock. Larson voiced interest in establishing a “spawner sanctuary” in Jamestown. Some oysters for consumption – “fundraisers”. Past involvement with “OGRE” program. **SAP voted unanimously to advise the MFC voice no objection to the proposal.**

2) The SAP considered CRMC Aquaculture Lease Application **2011-11-027, K. Hess, Hog Island Cove, Portsmouth**. Beutel and Hess outlined the proposal for a 3-acre lease of floating bag culture, and answered panel questions. Schey noted that the area is known to support recreational and commercial shellfishing. Hess noted that the area has difficult access due to the shallow depth and narrow access channel (usually accessed at high tide). Erkan noted relatively low densities of soft-shell clams, quahaugs, and razor clams. Full 3-acres will be occupied after 3 years. Hess noted most observed activity occurs around the perimeter of the island. **SAP voted 5 to 3 to advise the MFC voice no objection to the proposal.**

3) The SAP considered **CRMC Aquaculture Lease Application 2011-11-021, C. Jackson, Old Orchard Cove, Portsmouth**. Beutel and Jackson outlined a proposal for a 1-acre lease using tents for raising soft-shell clams (also including oysters, quahaugs, and bay scallops). Jackson stated that he would access the site by boat. CRMC required that prior lease be abandoned due to inactivity. Gardner voiced concerns based upon proposed methods (suggested rebar rather than rocks). Kelly noted commercial and recreational shellfishing occurs in the area. Jackson claimed that effort is limited to the “pits”. Jackson claimed that soft-shell seed will be purchased from Maine (in the absence of a natural set). Beutel noted that “spat collection” is not currently part of the proposal. General discussion questioned methods proposed by applicant. **SAP voted 5 to 2 with 1 abstaining, to advise the MFC voice objection to the proposal.**

4) **CRMC Aquaculture Lease Application 2011-12-048, W. & M. Garrahan, Ninigret Pond, Charlestown**. Beutel and Garrahan outlined a proposal for cage culture of oysters on a 1/2-acre lease. SAP complemented the quality of application submitted. Total aquaculture in Ninigret Pond including this lease and pending leases would be 19 1/2 acres (1.2% of pond area, less than the 5% limit). Erkan found a relatively low density of mantis shrimp and razor clams in the lease footprint. No local objections were noted by Beutel. **6 SAP members voted to advise the MFC voice no objection to the proposal, 2 abstained.**

As an aside, Kelly asked Beutel to reconvene the Aquaculture Working Group to formally discuss establishment of aquaculture lease acreage limits in Narragansett Bay. Beutel asked that a formal request be submitted.

ADDRESSING DETRIMENTAL OR UNINTENDED HARVEST METHODS THROUGH ESTABLISHMENT OF MARINE LIFE MANAGEMENT AREAS
DEM Fish and Wildlife January 2012

Need:

The purposed rule changes would create regulations governing harvest methods in Narragansett Bay, the coastal ponds, Little Narragansett Bay, and the Pawcatuck River where marine species may be commercially/recreationally harvested. These recommended rule changes are in response to “loopholes” in current regulations which, by omission, do not prevent environmentally detrimental or unintended harvest methods while in pursuit of unregulated species. Current regulations allow the pursuit of unregulated species (ie: razor clams, mantis shrimp, worms, etc.) in direct proximity to regulated species. Additionally, some unregulated species are being harvested in “uncertified waters” with gear intended for the harvest of shellfish. This makes enforcement and proper management problematic. The recommended language changes would fall under Parts I, III, IV, VI, and X of the RI Marine Fisheries Regulations. The proposed regulations are not intended to interfere with any legitimate net fishery or shellfish dredging fishery. It will be necessary however, to clarify what is permissible under existing marine fisheries regulations. Appropriate regulatory provisions will be identified during the Public Hearing process.

Proposed Definitions:

air-assisted harvest – use of an air compressor or compressed gas in a tank, to power any device designed to disturb, dislodge, or displace the substrate; or create a vacuum effect in collection of aquatic species.

bay scallop dredging – towing of a bay scallop dredge during the established bay scallop dredging season (per Part V of the RI Marine Fisheries Regulations).

detrimental harvest method – any method of harvest deemed harmful to marine and aquatic communities. May include disturbances to benthic communities and substrates; submerged aquatic vegetation; coastal wetlands; and any portion of the water column.

gear restriction marine life management area - portions of the public waters of the state limiting certain methods of harvest and/or species that may be retained by such methods, for the purpose of managing the harvest of marine species (see 20-3-4 below).

permitted dredging – the harvest of blue mussels, ocean quahaugs, surf clams, and bay scallops as provided by existing regulations and authorizations.

provided-for harvest methods – specific harvest methods intended to target particular marine species as identified under the RI Marine Fisheries Regulations.

unintended harvest methods – harvest methods intended for a particular species or area being employed in pursuit of unregulated species in sensitive or contaminated areas.

water-assisted harvest – use of a water pump or pressurized water, to power any device designed to disturb, dislodge, or displace the substrate; or create a vacuum effect in collection of aquatic species.

Proposed Modifications:

The DFW proposes regulatory modifications of the Marine Fisheries Regulations governing harvest methods within Narragansett Bay, the coastal ponds, Little Narragansett Bay, and the Pawcatuck River.:

- 1) The operation of any device or equipment intended to dislodge organisms from the substrate or displace the substrate for the purposes of harvest within the “gear restriction marine life management area” is prohibited (**except as provided**).
- 2) Possession of any equipment or device capable of dislodging or displacing organisms from the substrate while within the boundaries of the “marine life management area” is prohibited (**except as provided**).
- 3) Possession of shellfish, crustaceans, and other benthic organisms by any person while in possession of the aforementioned devices (or onboard any vessel) and within the boundaries of the established “gear restriction marine life management area” shall be prima facie evidence that person was fishing in violation of the provisions of this Chapter and shall be subject to the penalties and fines imposed thereby (**except as provided**).

Existing Regulations in Need of Modification through Public Hearing:

1. Amendments to “Part I – RI Marine Fisheries Regulations – Legislative Findings” to address harvest methods and habitat impacts by including definitions;
2. Amendments to “Part III – RI Marine Fisheries Regulations – Marine Fisheries Council” to address harvest methods and habitat impacts by establishing Gear Restriction Marine Life Management Areas.
3. Amendments to “Part IV – RI Marine Fisheries Regulations – Shellfish” to address harvest methods and habitat impacts.
4. Amendments to “Part VI – RI Marine Fisheries Regulations – Dredging for Shellfish” to address harvest methods and habitat impacts by clarifying dredging regulations.
5. Amendments to “Part X – RI Marine Fisheries Regulations – Equipment Restrictions” to address harvest methods.

Applicable RI General Law:

**TITLE 20
Fish and Wildlife**

**CHAPTER 20-3
Marine Fisheries Council**

SECTION 20-3-4

§ 20-3-4 Shellfish and marine life management areas. – The council may recommend to the director of environmental management, the designation of certain portions of the shores of the public waters of the state, or land within the state covered by tidewater at either high or low tide, or portions of the free and common fisheries of the state as shellfish or marine life project management areas for the purpose of enhancing the cultivation and growth of marine species, managing the harvest of marine species, facilitating the conduct by the department of experiments in planting, cultivating, propagating, managing, and developing any and all kinds of marine life, and any other related purpose. The designation shall be pursuant to the Administrative Procedures Act, chapter 35 of title 42, and shall be by reference to fixed landmarks. The council, upon the designation of a management area, shall propose any rules and regulations as it shall deem necessary for the protection and management of the management area and the animal life and property in the management area, including the exclusion or restriction of persons from the area or the prohibition of certain activities within the areas or other restrictions as it may deem necessary. Upon the designation of a management area, the director of environmental management shall place any stakes, bounds, buoys or markers with the words "Rhode Island department of environmental management" plainly marked on them, as will approximate the management area. Failure to place or maintain the stakes, bounds, buoys, or markers shall not be admissible in any judicial or administrative proceeding. The director may make any experiments or conduct any activities as in his or her discretion are appropriate in these management areas.

1/11/12

To DEM Shellfish Advisory Panel,

As a member of the SAP I
am requesting a vote on the below proposal.

Due to the ongoing economic recession
R.I. is in I propose putting a
"moratorium" on new regulations involving
harvesting any shellfish organisms in
R.I. State waters.

By doing so the intention is to maintain
a way for our state residents to create
revenue to support themselves and their
families.

Submitted by,

Jeff Gardner

Shellfish for You LLC

Watch Hill^{RI} Oysters

Reasoning behind Jeff's proposal

1/11/12

1. Lack of enforcement, Officers are already, overworked and understaffed.
2. DEM needs to focus more on actual real life, accurate, validated data collection, AND archiving new and old data to create a usable/accessable data stream.
3. I/we would like to see how other states regulations work on currently regulated and UNREGULATED species, i.e. Conn, Mass, N.Y, Maine, N.J.
4. "IF it ain't broke don't fix it and if it is put a bandaid on it until we can afford surgery.