

RHODE ISLAND MARINE FISHERIES COUNCIL
Minutes of Shellfish Advisory Panel
September 7, 2011 4:30 pm
Fort Wetherill Marine Laboratory, Jamestown, RI

MFC Members Present: J. Grant (Chair)

SAP Members Present: R. Bercaw, W. Blank, G. Schey, M. McGiveney, J Vivari (alt), D. Leavitt (scientific advisor)

Public Present: M. Brown, P. Brown, N. Papa

DEM Enforcement: F. Ethier

DEM Fish and Wildlife: D. Erkan

1) The SAP considered CRMC Aquaculture Lease Application 2011-07-018, Peter Brown, Coggeshall Cove, Portsmouth. Brown outlined his proposal to raise oysters in cages and answered panel questions. Currently has a 2 acre lease and wants additional space to the north (3 acres). Worked out potential issues with town representatives and local fishermen. Area known to have low shellfish density. The SAP recommended that the project can proceed without objection.

2) The SAP considered CRMC Aquaculture Lease Application 2011-07-081, Nick & Thomas Papa, Ninigret Pond, Charlestown. Papa outlined his proposal and answered panel questions. While the combined acreage of leases in Ninigret Pond is less than the 5% limit, the high concentration of leases has become an issue. Erkan found a relatively low density of razor clams and mantis shrimp within the footprint of the proposed expansion. The SAP recommended that the project can proceed without objection.

3) Continued Development of the 2011 – 2012 shellfish management area winter harvest schedule *as proposed by Industry*. The advisory panel modified some of its prior recommendations. The current recommendations are as follows discussed and recommended the following harvest schedule:

- All areas open Wednesday December 14, 15, 16, 19, 20, 21, 26, 27, and 28. Greenwich 8:00 AM – 11:00 AM. All other winter management areas 8:00 AM – 12:00 PM.
- Greenwich January: Monday and Wednesday 8:00 AM – 12:00 PM. February, March, and April; Monday, Wednesday, and **Friday** 8:00 AM – 12:00 PM
- All other winter management areas: January: Monday, Wednesday, and **Friday** 8:00 AM -12:00 PM. February 1 to April 30 - Monday through Friday sunrise to noon.

Erkan provided the SAP with a memo from Mark Gibson to the MFC dated 9/1/11 on shellfish issues of concern to DFW. The SAP discussed the memo and Industry-proposed scheduling specific to Greenwich. The Industry has requested that DFW to determine a total number of fishing days for western Greenwich assuming no rainfall closures. The Industry intent would be to have increased access to western Greenwich outside of the traditional winter fishing periods in response to, and based upon the number rainfall-induced closures. Erkan noted that the winter fishing schedule proposals can proceed while DFW is attempting to evaluate the Industry requests for harvest days and targets. After extensive discussion, it was clarified that the total amount of shellfish removed is the DFW primary concern, not total hours or total days

fished. The Industry request is to identify a maximum number of days available and have fishing opportunities outside the regular fishing season in the event of rainfall closures.

4) Discussion on Industry-proposed reconfiguration of High Banks and Potowomut area A. resumed. Industry proposed that the new Potowomut A be changed from 3 fishing days per week 8:00 AM to 12:00 PM in the winter, to sunrise - sunset, 7 days per week, 365 days-a-year. Industry suggests that reduced transplant funding and Potowomut pollution line changes no longer warrant the “loss of ground” in a sheltered area. Schey particularly, considers the expanded pollution closure of Potowomut and the “shellfish management area” status of both High Banks and Potowomut to be mismanagement and loss of ground by industry, rather than DFW meeting its responsibility for sustainability of the resource and Water Resources protecting public health. As mentioned in Gibson’s memo, DFW is concerned about a significant increase in effort with a corresponding reduction in sustainability, a shellfish management area open all the time bordered by a spawner sanctuary to the north, a winter management area to the south, and a 12 bushel possession limit to the east. Industry considers negotiation appropriate. Ethier suggested that a time limit is a potential alternative. Erkan does not consider the Industry proposal sustainable. Blank suggested 2 days per week (Tuesday and Thursday). Schey initially recommended to go forward with the proposal as-is. **The SAP ultimately voted to recommend reconfiguration of the footprints of High Banks and Potowomut shellfish management areas as proposed by Industry and voted to recommend that a reconfigured Potowomut area A, be open 365 days per year, sunrise to 2:00 PM. Erkan noted that the proposed management area footprint changes would need to go to public hearing.**

5) Discussion on air-assisted and water assisted harvest methods resumed. Erkan provided draft language for discussion (attached). Grant produced a “suite of options” after discussions with Ballou. Ethier noted that the current regulatory language is insufficient to prevent the use of the devices (unregulated species) Erkan noted it has never been DFW’s intent to allow the use of the harmful harvest methods though the omission of certain marine species. The “loopholes” could be closed by creating a “marine life management area for Narragansett Bay, the coastal ponds, Little Narragansett Bay, and the Pawcatuck River and prohibit the use and possession of the devices while in the marine life management area, except for specific provisions. The intent of the management area would address harvest methods and gear types to eliminate the detrimental methods, while providing for legitimate harvest methods of various species. Harvesting, attempting to harvest, or possessing language, as recommended by Grant would not prevent the use of the devices, and would increase the burden on Enforcement to determine whether or not an individual was in compliance. Erkan considers the operation of the devices and associated habitat impacts to be of greater significance than the need to provide for “loophole” harvesters. As in the previous SAP meetings, the panel supported the proposal conceptually. Erkan believes that regulations to address this issue will be a combination of gear/equipment restrictions combined with species-specific language in provided-for fishing methods. Some SAP members are resisting the proposals because they support “prospecting” for mussels. Erkan believes that a location-specific request for a permit from the Director (section 6.2 of the Marine Fisheries Regulations) is appropriate; otherwise, the loophole fishing will persist. Vivari clarified that the DFW proposal is intended to regulate equipment. **Erkan requested that the SAP provide recommended language and noted that a final proposal will go forward to public hearing.**

DRAFT REGULATIONS ADDRESSING DETRIMENTAL HARVEST METHODS

DEM Fish and Wildlife September 2011 – D. Erkan

Need:

The proposed rule changes would create regulations governing harvest methods in Narragansett Bay, the coastal ponds, and the Pawcatuck River (including Little Narragansett Bay) 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 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 and the harvest of regulated species as bycatch (horseshoe crabs, whelk, etc.). These loopholes make enforcement and proper management problematic. The recommended language would fall under Part X of the RI Marine Fisheries Regulations - Equipment Restrictions. 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 and make modifications where appropriate.

Definitions:

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

bay scallop dredging – towing of a bay scallop dredge during the established bay scallop dredging season.

bycatch – any species unintentionally captured in a directed fishery

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; restoration or enhancement projects; and any portion of the water column.

harvest restriction marine life management area - designated portions of the public waters of the state for the purpose of managing the harvest of marine species and permissible harvest methods.

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

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

Proposed Regulations:

The DFW proposes the following regulations governing harvest methods within Narragansett Bay, all coastal ponds, Little Narragansett Bay, and the Pawcatuck River:

- 1) The operation of any device or equipment capable of dislodging organisms from the substrate for the purposes of harvest within the “marine life management area” is prohibited (*except as provided*). *Bullrakes would be an example of a provided-for activity.*
- 2) Possession of any equipment or device capable of dislodging organisms from the sediment while within the boundaries of the “marine life management area” is prohibited (*except as provided*). *A vessel equipped for surf clam dredging, traversing the area to access the fishery outside the management area footprint would be an example of a provided-for activity.*

- 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 “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:

PART VI - DREDGING FOR SHELLFISH

6.2 Use of Dredges -- Except as hereinafter provided and unless otherwise specified by regulation of the **Department of Environmental Management Marine Fisheries Council**, no person shall take any **species oysters, bay quahaugs, or soft-shell clams** from the waters of this State by dredges, rakes, or other apparatus operated by mechanical power or hauled by power boats. No **licensed** person shall cast, haul, or have overboard any dredges while fishing for **any species other than blue mussels, ocean quahaugs, or surf clams oysters, bay quahaugs, or soft-shell clams** from the free and common fisheries of this State, nor shall any **licensed** boat be used for fishing **any species other than blue mussels, ocean quahaugs, or surf clams oysters, soft-shell clams, or bay quahaugs** with dredges, except as herein provided; provided, however, that any person having a license issued under this Title for the taking of scallops may use a dredge or dredges, not exceeding six (6) in number nor exceeding twenty-eight inches (28") each in width, for that purpose, provided that the licensee shall immediately return all **species other than blue mussels, ocean quahaugs, or surf clams oysters, soft-shell clams, or bay quahaugs** caught by the licensee to the waters from which they were taken. Any licensed boat may be used in dredging for mussels by the licensee of that boat, the licensee having first obtained a permit from the Director of Environmental Management allowing the licensee so to do; provided the licensee, while dredging for mussels under the permit granted the licensee by the Director, shall immediately return all **species other than blue mussels, ocean quahaugs, or surf clams oysters, scallops, or bay quahaugs** caught by him or her to the waters from which they were taken. **Permits issued by the Director for blue mussel dredging permits within the Narragansett Bay/Coastal Pond Marine Life Management Area will specify where dredging is permissible. Use of a dredge within the Narragansett Bay/Coastal Pond Marine Life Management Area shall be limited to areas so authorized.** The fact of any licensed person being found with **any species other than blue mussels oysters, scallops, or bay quahaugs** in his or her possession while dredging for mussels 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 by this chapter. Any resident dredging for surf clams or skimmers, shall not be in violation of this Section if that dredging is done southerly of the coastline of Little Compton, southerly of a line extending from Church Point, in the town of Little Compton, to Flint Point on Aquidneck Island, southerly of the coastline of Aquidneck Island, southerly of a line extending from Castle Hill Point on Aquidneck Island, to Southwest Point of Conanicut Island to Bonnet Point, Narragansett, easterly of the coastline of the town of Narragansett, southerly of the coastline of the towns of Narragansett, South Kingstown, and Charlestown, and westerly to the Connecticut line. For the purpose of this section, coastline refers to the land facing the open sea. (RIGL 20-6-7) [Penalty - Part 6.6 (RIGL 20-6-13)]