

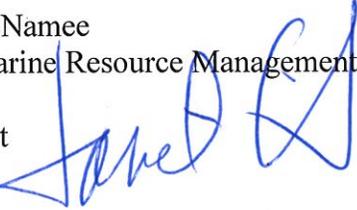


RHODE ISLAND
DEPARTMENT OF ENVIRONMENTAL MANAGEMENT

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: October 31, 2018

Re: Final Decisions Pertaining to (1) September 10, 2018 Marine Fisheries Public Hearing Items; and (2) Winter Harvest Schedule for Bristol Harbor Shellfish Management Area

I have received and reviewed your memo to me, dated October 18, 2018 and attached herewith, regarding the public hearing items from the September 10, 2018 public hearing. I have also received and reviewed all relevant supporting documentation, including the September 10, 2018 public hearing documents and summary of public comments, as well as the summary report (draft meeting minutes) from the October 1, 2018 meeting of the RI Marine Fisheries Council (RIMFC).

I hereby approve all the recommendations, as set forth in your memo, which, with the exception of items 4, 7, and 10, are fully consistent with those provided by the RIMFC at the Council's October 1, 2018 meeting. The specific regulatory items, and the final decisions for each, are as follows:

Definitions (Part 1)

- Decision: Adoption of the amended provisions, which delete eleven nonapplicable terms, add one new term, and make minor/nonsubstantive modifications/clarifications to twelve terms, in Part 1.

Commercial Licensing (Part 2)

1. Exit/Entry Ratio for Restricted Finfish Endorsement

- Decision: Maintain status quo, i.e., 1:1 ratio.

2. Due Date for Public Availability of Draft Annual Update of Sector Management Plan

- Decision: Adoption of the amended provision, which requires draft of annual update of sector management plan to be made available for public review at least thirty days prior to annual public hearing addressing commercial licensing.

3. Annual Report to General Assembly

- Decision: Repeal of provisions pertaining to the annual report to the General Assembly, given that such annual reporting is adequately addressed in statute and via annual conveyance of the updated Sector Management Plan.

4. Reporting Requirements – Notification to Licensees (1)

- Decision: Adoption of the amended provision, which clarifies the provision pertaining to annual notification of reporting methods.
- Comment: As proposed, the requirement that all licensees are to be provided with a list of applicable reporting requirements would have been repealed, since it has never been implemented, per se. Ample notification is routinely provided to licensees regarding all reporting protocols and requirements, albeit not via a “list.” Upon further review and analysis, I support the revised proposal, as set forth in your memo, to retain the essence of the rule, while clarifying the language – i.e., substituting “methods” for “requirements” -- to better align with current practices and procedures.

5. Use of Certified Mail for Notifying License Holders of Reporting Deficiencies

- Decision: Repeal of provision pertaining to use of certified mail, since a total of four letters/notifications regarding reporting requirements and deficiencies are sent annually, via regular mail, to all licensees; and the use of certified mail is costly while providing no added assurance of receipt, and therefore provides no added service to licensees.

6. Documentation of Fishing Trips (1)

- Decision: Adoption of the amended provisions, which relocate the provisions pertaining to documentation of fishing trips from the “*Paper Catch and Effort Harvester Logbook*” section to the “*Data Reporting*” section.

7. Documentation of Fishing Trips (2)

- Decision. Adoption of the amended provision, which requires documentation of trips “*upon landing*” in lieu of “*before the start of the next trip.*”
- Comment: I recognize that neither of the two initially proposed options for modifying this provision were supported at hearing, and that the Council recommended use of “*upon landing*” as a preferred alternative, with the caveat that the matter be postponed pending further clarification of the term “*documented.*” My decision is to move forward now with the filing and implementation of the amended provision, and then follow-up, via the next public hearing, with a proposal to clarify the meaning of

“documented.” In the meantime, I call upon the Department’s Office of Law Enforcement to exercise discretion in determining proper documentation.

8. Reporting Due Dates

- Decision: Adoption of these provisions, which establish quarterly due dates for the submittal of trip reports, consistent with the instructions provided for these reports.

9. Reporting Requirements – Notification to Licensees (2)

- Decision: Repeal of the provision requiring written notification to licensees of reporting requirements by December 1 annually.
- Comment: As noted under item 4, ample notification regarding all reporting protocols and requirements is routinely provided to licensees and remains a regulatory obligation.

10. Deadline for Issuance of New Licenses

- Decision: Adoption of amended provision, which establishes new deadline of May 15.
- Comment: I recognize and appreciate that the Council’s thoughtful deliberation on this issue, and their recommendation that the deadline be set at 45 business days following the [February 28] application deadline. That recommendation would result in a new, floating deadline occurring in early May of each year. Upon further review and consultation with the Department’s Office of Boat Registration and Licensing, I find that the large amount of work associated with the review of new license applications, which would increase if the already high volume of applications were to grow, warrants a more realistic and appropriate date-specific deadline of May 15. I note that this is akin to approximately 50 business days following the application deadline, making it quite close, in effect, to the Council’s recommendation.

11. Appeal of License Denial Due to Medical Hardship

- Decision: Adoption of amended and appealed provisions, which clarify, streamline, and align them with associated statutory provisions.

12. Reporting Requirements for Party/Charter Vessels

- Decision: Adoption of the new provisions, which establish new reporting requirements for vessels operating in party/charter mode. In keeping with the final decision on item 7, and the Council’s recommendation, trip documentation shall be required *“upon landing”* versus *“prior to the end of the fishing trip.”* As well, the meaning of *“documented”* shall be clarified and codified via the next public hearing. In the meantime, I call upon the Department’s Office of Law Enforcement to exercise discretion in determining proper documentation.

Bristol Harbor Shellfish Management Area (Part 4)

- Decision: Adoption of new default winter harvest schedule for the Bristol Harbor Management Area: Open 8 am to 12 noon, M/W/F, in January; open daily from February through April; and closed from May through December.



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

INTER-OFFICE MEMO

TO: Janet Coit, Director

FROM: Jason McNamee, Chief

DATE: October 18, 2018

SUBJECT: Decisions regarding proposed amendments to the RI Marine Fisheries regulations that were the subject of a public hearing conducted on September 10th and RI Marine Fisheries Council (RIMFC) meeting on October 1st. A summary of written and oral comments received has been also provided as an addendum to this memo.

- **Proposed amendment to “Part 1 - Definitions and General Provisions” regarding deletion, amendment and/or addition of 24 terms:**
 - Background: Part of a continued effort to review the content of all Marine Fisheries regulations.
 - Proposal: Division proposal to delete 11 terms not used in RIMFR, add 1 term, and clarify 12 terms. For this hearing focus was on terms relative to commercial licensing and gear to coincide with proposed amendments to the Licensing regulations. None of the proposed changes is considered by the Division to be substantive.
 - Public comments: No comments received.
 - RIMFC: 6-0 in support as proposed.
 - Marine Fisheries: Support as proposed.
 - Timing to file: Immediately.

- 2. **Proposed amendments to “Part 2 – Commercial and Recreational Saltwater Fishing Licensing Regulations”:**
 - **Exit:entry ratio for the Restricted Finfish Endorsement:**
 - Background: Annual review by Industry Advisory Committee (IAC).
 - Proposal: 2 options noticed:
 3. Option 1: Division proposal to maintain the current 1:1 ratio (would result in the availability of **15** new license opportunities in 2019);
 4. Option 2: IAC proposal to amend the ratio to 1:2 (would result in the availability of **30** new license opportunities in 2019).
 - Public comments: 3 hearing comments in support of option 1.

- RIMFC: 6-0 in support of option 1.
 - Marine Fisheries: Support of option 1. The Division does not support option 2 at this time due to uncertainty with 2019 quotas.
 - Timing to file: Immediately; effective date of January 1, 2019 needed.
3. **Division proposal to add a due date regarding the public availability of the updated Sector Mgmt. Plan:**
- Background: Combined with hearing item #3 of the Licensing regulations, it is necessary that a timeframe be established for the public availability (namely, to the IAC) of this plan.
 - Proposal: Division proposal to add a due date of “30 days prior to the hearing on commercial licensing matters.”
 - Public comments: No comments received.
 - RIMFC: 6-0 in support as proposed.
 - Marine Fisheries: Support as proposed.
 - Timing to file: Immediately.
4. **Division proposal to remove language regarding the content and due date for the issuance of an annual report to the General Assembly on the conservation and management of marine fisheries resources (i.e., Sector Management Plans):**
- Background: The due date for the submittal and content of this annual report to the General Assembly is adequately covered in statute; is not appropriate or needed for rules as is non-regulatory in nature.
 - Proposal: Division proposal to delete this section from regulation.
 - Public comments: No comments received.
 - RIMFC: 6-0 in support as proposed.
 - Marine Fisheries: Support as proposed.
 - Timing to file: Immediately.
5. **Division proposal to remove language regarding the requirement that the Department provide a list of reporting requirements at the time of license issuance or renewal to applicants for commercial fishing or dealer licenses or landing permits:**
- Background: At the time of noticing it was believed that this procedure was not currently being implemented and was felt to be unnecessary due to other notifications/mailings currently taking place (see background for hearing item #5). However, further discussions with the Licensing Office since then have indicated that this procedure is in fact currently being implemented, in that reporting methods are provided on the application form, with licensees required to identify their reporting method at the time of application.
 - Proposal: Division proposal to delete this section from regulation.
 - Public comments: No comments received.
 - RIMFC: 6-0 in support as proposed.
 - Marine Fisheries: The Licensing Office has recommended that this provision can remain as currently implemented and provides value to the prospective applicant, however if remaining, to be revised as follows: “**The Department will provide**

[a]pplicants ~~for commercial fishing or dealer licenses or landing permits will be provided a list of~~ **with** applicable reporting **methods requirements** at the time of license issuance or renewal.” This revision will remove reference to a “list” which is somewhat inaccurate, while still maintaining the intent of the rule. The Division supports removal of this rule or the revision as recommended by the Licensing office.

- Timing to file: Immediately.

6. **Division proposal to remove language regarding the requirement that the Department notify license holders of a reporting deficiency via certified mail:**

- Background: This procedure is not currently implemented and is felt to be unnecessary due to the following mailings that licensees receive from the Department:
 - November 1: By November 1 annually, per statute [RIGL 20-2.1-4\(g\)](#), regular mailing from Office of Licensing regarding expiration of license on 12/31 and need for renewal, which specifies the 2/28 renewal deadline, the grace period and fee if 2/28 deadline missed, and that data reporting must be up to date as a condition of license renewal. Provides contact to Marine Fisheries office and describes reporting options.
 - End of November: Mailing from Division of Marine Fisheries to all license holders (1,000 +) deficient in reporting, per regulation 2.7.6(A)(4).
 - Mid-December: Renewal applications mailed from Office of Licensing to all license holders. Not required per regulation or statute.
 - Mid-March: Mailing from Office of Licensing to all current license holders who have not renewed (100 +) notifying of grace period. Not required per regulation or statute. Phone calls attempted to each license holder in addition to mailing.
- Proposal: Division proposal to delete this section from regulation.
- Public comments: One comment received expressing concern about removing this requirement as it provides proof of delivery.
- RIMFC: 6-0 in support as proposed.
- Marine Fisheries: Support as proposed.
- Timing to file: Immediately.

7. **Division proposal to broaden the applicability regarding the timeframe for when fishing trips must be documented. Proposal is to re-locate language from the “Paper Catch and Effort Harvester Logbook” section to “Data Reporting” section:**

- Background: This language is incorrectly located in regulation.
- Proposal: Division proposal to relocate the language from the “Paper Catch and Effort Harvester Logbook” section to the “Data Reporting” section so as to apply more broadly to all license holders, consistent with statute and current practice.
- Public comments: No comments received.
- RIMFC: 6-0 in support as proposed.
- Marine Fisheries: Support as proposed.
- Timing to file: Immediately.

8. **Division proposal to change the timeframe that fishing trips must be documented:**

- Background: Division proposal to amend the language for consistency with federal rules.
- Proposal: 2 options were noticed:
 - Option #1: Modify language from “Trips must be documented *before the start of the next trip*” to “***prior to landing***”;
 - Option #2: Modify language from “Trips must be documented *before the start of the next trip*” to “***within three (3) hours of landing.***”
- Public comments: 3 comments in support of maintaining the current language as is.
- RIMFC: 6-0 in support of postponing adoption of amended rule until the meaning of “*documentation*” is clarified.
- Marine Fisheries: Support for either option as proposed, or to change to “Trips must be documented ***upon landing.***” as recommended by the Council for hearing item #12 of the Licensing regulations; defer to DLE for their recommendation.
- Timing to file: Immediately.

9. **Division proposal to add reporting due dates to the regulations:**

- Background: The reporting due dates are currently only provided on the Paper Logbook instructions and not in regulation. Such due dates need to be included in regulation to be clearly known to licensees and to be enforceable.
- Proposal: Division proposal to add due dates to the regulation.
- Public comments: No comments received.
- RIMFC: 6-0 in support as proposed.
- Marine Fisheries: Support as proposed.
- Timing to file: Immediately.

10. **Division proposal to remove the requirement that license holders will be notified in writing as to the form of reports, their content, and the manner in which and frequency with which they are required to be transmitted by December 1 for the following year:**

- Background: This procedure is not currently implemented and is felt to be unnecessary due to the mailings that licensees currently receive from the Department (see item #5 above).
- Proposal: Division proposal to delete this section from regulation.
- Public comments: No comments received.
- RIMFC: 6-0 in support as proposed.
- Marine Fisheries: Support as proposed.
- Timing to file: Immediately.

11. **Division proposal to amend the date pertaining to the issuance of licenses following the application deadline:**

- Background: The current timeframe of 15 days following the application deadline is not currently being met and is not realistic due to volume of applications received.
- Proposal: Division proposal to change this timeframe from 15 business days to 90 business days.
- Public comments: No comments received.
- RIMFC: 5-1 in support to amend this timeframe to 45 business days.
- Marine Fisheries: Support as proposed, or of a hard deadline date of May 1, which equates approximately to the 45 business days recommended by the Council.
- Timing to file: Immediately.

12. Division proposal to change/clarify the procedure regarding the appeal of a license denial due to medical hardship:

- Background: The rule as currently written still references the Commercial Licensing Review Board, which was statutorily repealed in 2016, and does not accurately describe this appeal process.
- Proposal: Proposal from the Office of Legal Services to amend the language consistent with current practice and statute.
- Public comments: A statement was made that proposal appears to remove a person's ability to appeal in cases other than medical hardship.
- RIMFC: 6-0 in support as proposed.
- Marine Fisheries: Support as proposed.
- Timing to file: Immediately.

13. Division proposal to add reporting requirements for Party/Charter vessels:

- Background: Consistency with new NOAA Fisheries rules for reporting by federally permitted party/charter vessels.
- Proposal: Proposed addition of reporting requirements for all Party/Charter vessels, including non-federally permitted.
- Public comments: Letter of support from RIPCBA/Rick Bellavance.
- RIMFC: 6-0 in support as proposed, with caveat that proposed language "*prior to the end of the fishing trip*" be amended to "*upon landing*" and to clarify meaning of "*documentation*" as used in the rule.
- Marine Fisheries: Support for either option; defer to DLE for their recommendation.
- Timing to file: Immediately.

• **Bristol Harbor Shellfish Mgmt. Area winter harvest schedule:**

- Background: Proposal from industry to amend the default schedule for this Shellfish Management Area.
- Proposal: Liberalize the default schedule to resemble the annual schedule that expired in 2016 as follows:
 - January 2 through January 31: Open 8:00 A.M. to 12:00 noon on Mondays, Wednesdays, and Fridays.

- February 1 through April 30: Open daily.
 - May 1 through January 1: Closed.
-
- RIMFC: 6-0 in support to amend as proposed.
 - Marine Fisheries: Support as proposed. The Division recommends that management goals and strategies for this management area be assessed upon closure of the area in April 2019.
 - Timing to file: Immediately.



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DEPARTMENT OF ENVIRONMENTAL MANAGEMENT
DIVISION OF MARINE FISHERIES
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SUMMARY OF HEARING COMMENTS

A public hearing was held on **September 10, 2018** at 6:00 PM, URI Narragansett Bay Campus, Corless Auditorium, Narragansett, RI. Seven (7) persons were in attendance. The public comment period began May 18 and ended June 18.

- Proposed amendment to “Part 1 - Definitions and General Provisions”, to delete, add, or amend 24 terms (section 1.7):
 - No comments were made or received.
- Proposed amendment to “Part 2 - Commercial and Recreational Saltwater Fishing Licensing Regulations”:
 1. Restricted Finfish Endorsement (section 2.7.1(D)(1):
 - Option 1/Status quo: Maintain the current 1:1 exit:entry ratio.
 - Option 2/IAC proposal: Modify the exit:entry ratio from 1:1 to 1:2.
 - K. Booth: In support of option 1 as potential impacts are unknown.
 - Dave...: In support of option 1.
 - M. Conti/Snug Harbor Marina: In support of option 1 due to difficulty with managing current quotas. In support of Scup being placed in the non-restricted category to provide additional opportunity. Believes the current 1:1 ratio is working well.
 - D. Swanson: In support of option 1.
 2. Division proposal to add a due date of “30 days prior to any public hearing on commercial licensing” regarding the public availability of the updated Sector Mgmt. Plan (combined with item 3)(section 2.7.2(A)):
 1. No comments were made or received.
 3. Division proposal to remove language regarding the content and due date for the issuance of an annual report to the General Assembly on the conservation and management of marine fisheries resources (i.e., Sector Management Plans)(combined with item 2)(former section 2.7.4(B)):
 2. No comments were made or received.

4. Division proposal to remove language regarding the requirement that the Department provide a list of reporting requirements at the time of license issuance or renewal to applicants for commercial fishing or dealer licenses or landing permits (former section 2.7.6(A)(2)):
 3. No comments were made or received.
5. Division proposal to remove language regarding the requirement that the Department notify license holders of a reporting deficiency via certified mail (former section 2.7.6(A)(4)):
 - K. Booth: Objects to removing this requirement, as certified mail provides proof of delivery.
6. Division proposal to broaden the applicability regarding the timeframe for when fishing trips must be documented. Proposal is to re-locate language from the "Paper Catch and Effort Harvester Logbook" section to "Data Reporting" section (section 2.7.4(C)):
 4. No comments were made or received.
7. Division proposal to change the timeframe that fishing trips must be documented (section 2.7.4(C)):
 - Option #1: Modify language from "~~before the start of the next trip~~" to "prior to landing";
 - Option #2: Modify language from "~~before the start of the next trip~~" to "within three (3) hours of landing".
 - K. Booth: In support of maintain the current language as is, as proposal is overly burdensome for smaller vessels. Stated the enforcing would be difficult as time of landing is unknown, and that the current language *before the start of the next trip* is clearly measurable.
 - M. Conti: In support of maintain the current language as is. Believes that implementing option 2 would result in increased use of paper as the reporting timeframe is less burdensome.
 - Dave...: In support of maintain the current language as is, as proposal is overly burdensome for smaller vessels. Could support a timeframe greater than 3 hours from the time of landing.
8. Division proposal to add reporting due dates (section 2.7.4(E)):
 5. No comments were made or received.
9. Division proposal to remove the requirement that license holders will be notified in writing as to the form of reports, their content, and the manner in which and frequency with which they are required to be transmitted by December 1 for the following year (former section 2.7.6(B)(2)):
 6. No comments were made or received.

10. Division proposal to amend the date pertaining to the issuance of licenses following the application deadline. Proposal is to change from fifteen days to ninety days (section 2.7.5(E)(3)):

7. No comments were made or received.

11. Division proposal to change/clarification of procedure regarding the appeal of a license denial due to medical hardship (section 2.7.5(H)):

- K. Booth: Statement made that proposal appears to remove a person's ability to appeal in cases other than medical hardship. Requested that a review of overall repeal processes be reviewed.

12. Division proposal to add reporting requirements for Party/Charter vessels (proposed new section 2.9.2; p. 47):

2. RIPCBA/Rick Bellavance: Provided letter of support.