



# Rhode Island Marine Fisheries Council

3 Fort Wetherill Road Jamestown, Rhode Island 02835

(401) 423-1920 Fax: (401) 423-1925

**RIMFC:** Robert Ballou, *Chairman*; Travis Barao; Andy Dangelo; Katie Eagan; Jason Jarvis; David Monti, *Vice Chair*; Christopher Rein; Michael Rice, Ph.D.; Mike Roderick

## **MEETING NOTICE** **RI MARINE FISHERIES COUNCIL**

**December 2, 2019 – 6:00 PM**

**URI Narragansett Bay Campus, Coastal Institute Building, Corless Auditorium**  
**South Ferry Road, Narragansett, RI**

### **AGENDA**

<b>Agenda item</b>	<b>Recommended action(s)</b>	<b>ePacket Attachment(s)</b>
<b>1. Tonight's agenda</b>	Approval of agenda.	<ul style="list-style-type: none"><li>• Tonight's meeting agenda.</li></ul>
<b>2. Meeting minutes from last meeting</b>	Approval of meeting minutes.	<ul style="list-style-type: none"><li>• Draft minutes from meeting on 10/15/2019.</li></ul>
<b>3. Public comment</b>	Discussion and/or recommendations for future action.	N/A
<b>4. <u>Responses to public comments made last meeting:</u> <i>J. McNamee</i></b>	FYI, discussion and/or recommendations for future action.	
<b>5. <u>Shellfish Advisory Panel meeting summary (10/23/2019):</u> <i>K. Eagan</i></b>	Approval of meeting minutes.	<ul style="list-style-type: none"><li>• Noticed agenda.</li><li>• Powerpoint presentation.</li><li>• Draft meeting minutes.</li></ul>
<b>6. <u>Aquaculture lease application 2019-01-063:</u> <i>K. Eagan</i></b>	Recommendation to CRMC.	<ul style="list-style-type: none"><li>• Lease application</li><li>• Preliminary Determination Summary of Findings</li><li>• DEM Review Letter</li><li>• Letter from NK Town Council</li><li>• Letter from CRMC (D. Beutel)</li></ul>
<b>7. <u>2020 Sector Management Plan:</u> <i>J. McNamee</i></b>	Recommend adoption of updated plan	<ul style="list-style-type: none"><li>• Guiding statute.</li><li>• Draft plan.</li></ul>

<p><b>8. <u>November 12 public hearing items:</u></b> <i>J. McNamee</i></p>	<p>Provide recommendations to the Director regarding proposed regulations.</p>	<ul style="list-style-type: none"> <li>• Tautog over-harvest provision</li> <li>• Proposed high-grading rule</li> <li>• 2020 comm. Black sea bass</li> <li>• 2020 comm. Scup</li> <li>• 2020 comm. Summer flounder</li> <li>• 2020 Bluefish</li> <li>• 2020 comm. menhaden</li> <li>• Proposed Ocean pout prohibition</li> <li>• Proposed Atl. Wolffish prohibition</li> <li>• Proposed adoption of a whelk pot tagging program. <ul style="list-style-type: none"> <li>○ 9-25-19 SAP meeting summary</li> </ul> </li> <li>• Part 12 - Research Pilot Aggregate Program</li> <li>• Part 13 - Cooperative Multi-state Possession and Landing Pilot Program for Summer Flounder</li> <li>• Hearing powerpoint presentation.</li> <li>• Written comments received</li> <li>• Summary of hearing comments.</li> </ul>
<p><b>9. <u>FYI:</u></b></p>		<ul style="list-style-type: none"> <li>• Division letter of support re: Framework Adjustment 14 to the Summer Flounder, Scup, and Black Sea Bass Fishery Management Plan</li> </ul>
<p><b>10. Any other matters</b></p>		
<p><b>11. Adjourn</b></p>		

**All RIMFC Meetings are open to the public**

To be posted to Sec. of State Open Meetings on November 25, 2019



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## MEETING SUMMARY

October 15, 2019

Chairperson: *B. Ballou (DEM)*

RIMFC members present: *A. Dangelo, K. Eagan, J. Jarvis, D. Monti, C. Rein*

Division: *J. McNamee, J. Lake, J. Livermore, N. Costa, C. Parkins, M. Bucko, P. Duhamel*

DEM Legal: *C. Hoefsmit*

Public: Approximately 10-12 persons in attendance.

1. **Approval of the Agenda:** *B. Ballou* offered a change to item 4 of the agenda, in order to add an action item to both approve the minutes of the Shellfish Advisory Panel meeting that occurred, and also to provide a Council recommendation regarding proposed amendments to winter harvest schedules that was subject of the meeting. Inquiring as to any objections to approving the agenda as modified, or as to any other modifications desired, and hearing none, the agenda was approved by consent.
2. **Approval of minutes from meeting on September 9, 2019:** *B. Ballou* inquired as to any proposed modifications or objections to adopting the minutes. Hearing none, the minutes were approved by consent.
3. **Public comments regarding other matters not on agenda:** *P. Duckworth* inquired about the possibility of moving to a weekly aggregate possession limit for Skate and Monkfish. *J. McNamee* offered that the matter could be reviewed internally and discussed at a subsequent workshop with the goal of formulating a proposal for a regulatory amendment. Mr. Duckworth then expressed confusion with regulations regarding coastal sharks and identification of species, to which *J. McNamee* offered that he would look at the rules and tables to determine if additional clarifications could be provided. *T. Mulvey* proposed that the state should look into jurisdiction of the EEZ between Block Island and the mainland to provide for ease of transit through federal waters between state waters around Block Island and the RI mainland. *B. Ballou* noted that there is a pending federal rule which would provide for transit by state vessels through this part of the EEZ for Summer flounder, Scup, and Black sea bass, but that this doesn't include federally permitted vessels. He offered that it would take an act of Congress to alter jurisdiction of federal waters. He offered that the matter could be added to a subsequent Council agenda for a more thorough discussion after the federal rule is adopted.
4. **Shellfish Advisory Panel (SAP) meeting summary; amendment to winter harvest schedules for Greenwich Bay and Bissel Cove/Fox Island Shellfish Management Areas:** *K. Eagan* provided an overview of the meeting as reflected in the minutes provided. **Motion**

made by *D. Monti* to recommend that the schedule for the Greenwich Bay and Bissel Cove/Fox Island Shellfish Management Areas be modified as recommended by the SAP to be opened on Tuesday, December 24<sup>th</sup>, Thursday December 26<sup>th</sup>, and Tuesday December 30<sup>th</sup>, in addition to the open days currently scheduled; 2<sup>nd</sup> by *C. Rein*. The motion passed 5 – 0.

5. **Application to Shellfish Advisory Panel membership:** Motion made by *A. Dangelo* to appoint applicants Kenneth Murgo and John McDonald to the Shellfish Advisory Panel effective immediately; 2<sup>nd</sup> by *D. Monti*. The motion passed 5 – 0.
6. **2020 Sector Management Plan:** *J. McNamee* provided an overview of the purpose of the plan and the process for approval. He informed The Council that the plan would be updated with Council recommendations from tonight’s meeting and provided to the Council for final approval at the December meeting.
7. **September 10 public hearing items:**
  - Clarify reporting documentation requirements as it pertains to trip data reporting (section 2.7.4(C)): Motion made by *D. Monti* to recommend that the Director adopt amended section 2.7.4(C) as proposed, amended to clarify that item #10 of the required fields “dealer sold to” be identified as an optional requirement to be completed only if known at the time of logging the report; 2<sup>nd</sup> by *C. Rein*. The motion passed 5 – 0.
  - Clarify due dates for the submittal of commercial trip data reporting (sections 2.7.4(E)&(F)): Motion made by *K. Eagan* to recommend that the Director adopt amended sections 2.7.4(E)&(F) as proposed; 2<sup>nd</sup> by *A. Dangelo*. The motion passed 5 – 0.
  - Amend the standard of “Actively Fishing” as it pertains to eligibility for the issuance of a new Commercial Fishing License with Quahaug endorsement for holders of a Student Shellfish License (section 2.7.5(D)(1)(b)(3)): Motion made by *C. Rein* to recommend that the Director adopt amended section 2.7.5(D)(1)(b)(3) as proposed; 2<sup>nd</sup> by *D. Monti*. The motion passed 5 – 0.
  - Add new language to rule that establishes that residency status must be maintained to maintain eligibility for license renewal (section 2.7.5(E)(3)(a)): Motion made by *D. Monti* to recommend that the Director adopt amended section 2.7.5(E)(3)(a) as proposed; 2<sup>nd</sup> by *J. Jarvis*. The motion passed 5 – 0.
  - Amend the eligibility requirements for the prioritization of the issuance of new licenses (section 2.7.5(G)(1)(e)): Motion made by *J. Jarvis* to recommend that the Director adopt amended section 2.7.5(G)(1)(e) as proposed; 2<sup>nd</sup> by *A. Dangelo*. The motion passed 4-0-1 (*C. Rein* abstained).
  - Require dealer reporting compliance as a condition of dealer license renewal (section 2.7.9(A)(7)): Motion made by *D. Monti* to recommend that the Director adopt amended section 2.7.9(A)(7) as proposed; 2<sup>nd</sup> by *C. Rein*. The motion passed 5 – 0.

- Clarify the reporting requirements for the Party/Charter sector (section 2.9.2(F)): **Motion made by A. Dangelo to recommend that the Director adopt amended section 2.9.2(F) as proposed; 2<sup>nd</sup> by C. Rein. The motion passed 5 – 0.**
  - For licensed Party/Charter vessels/captains, add reporting compliance as a condition of maintaining and/or renewing their P/C license (section 2.9.2(F)(5)): **Motion made by A. Dangelo to recommend that the Director adopt amended section 2.9.2(F)(5) as proposed; 2<sup>nd</sup> by D. Monti. The motion passed 5 – 0.**
8. **Division proposal to amend whelk minimum size – process moving forward:** *J. McNamee* informed that Council that this matter would be brought back to workshop this winter for further vetting and dialogue with industry with the goal of bringing to hearing in February.
9. **Meeting adjournment:** The meeting was adjourned by consent at approximately 7:20pm.

The full video recording of the meeting is available at the DEM YouTube channel at the following [link](#). Individual agenda items and their times can be viewed by expanding the “SHOW MORE” tab.



# Rhode Island Marine Fisheries Council

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**Panel Chair:**

Katie Eagan

**Scientific Advisor:**

Dale Leavitt

**Membership:**

Jeff Gardner

*Aquaculture*

Bob Rheault

*Alternate for J. Gardner*

David Ghigliotty

*Comm. Bullrake*

Mike McGiveney

*Comm. Bullrake*

Martin McGiveney

*Alternate for Mike McGiveney*

Gerald Schey

*Comm. Bullrake*

Bob Bercaw

*Comm. Bullrake*

Manuel Sousa

*Comm. Bullrake*

Katie Eagan

*Comm. East Bay*

Bob Smith

*Dealer*

Roger Tellier

*Recreational Rod & Reel*

Richard Pastore

*Recreational Rod & Reel*

Edward Troiano

*Recreational Shellfish*

**Marine Fisheries staff:**

Anna Gerber-Williams

## **Meeting Notice**

### **Shellfish Advisory Panel**

**Wednesday October 23, 2019, 4:30PM**

URI Bay Campus Coastal Institute Large Conference Room

215 South Ferry Road, Narragansett, RI 02882

## **MEETING AGENDA**

1. Review of aquaculture applications sent to Public Notice.
  - a. [2019-01-063, Richard and Pinheiro, West Passage](#)
  - b. [2019-07-003, Scappatura, Quonochontaug Pond](#)
2. Providence River re-classification presentation from the RIDEM Office of Water Resources
3. Providence River shellfish management area presentation by the RIDEM Division of Marine Fisheries
  - a. Present quahog assessment model
  - b. Prospective shellfish management plan
4. Shellfish transplants
  - a. Providence River
  - b. Recommendations for transplant areas
5. Present new tagging area maps and tagging labels.
6. Shellfish classification program updates and summary of Harmful Algae Bloom protocol and monitoring results by Office of Water Resources.

**All RIMFC Species Advisory Panel meetings are open to the public.**

For more information please contact Anna Gerber-Williams at (401) 423-1930.

\* Aquaculture applications can be found at <http://www.crmc.ri.gov/applicationnotices.html>

*Posted to Sec. of State October 15, 2019*



# Providence River re-classification RIDEM Office of Water Resources

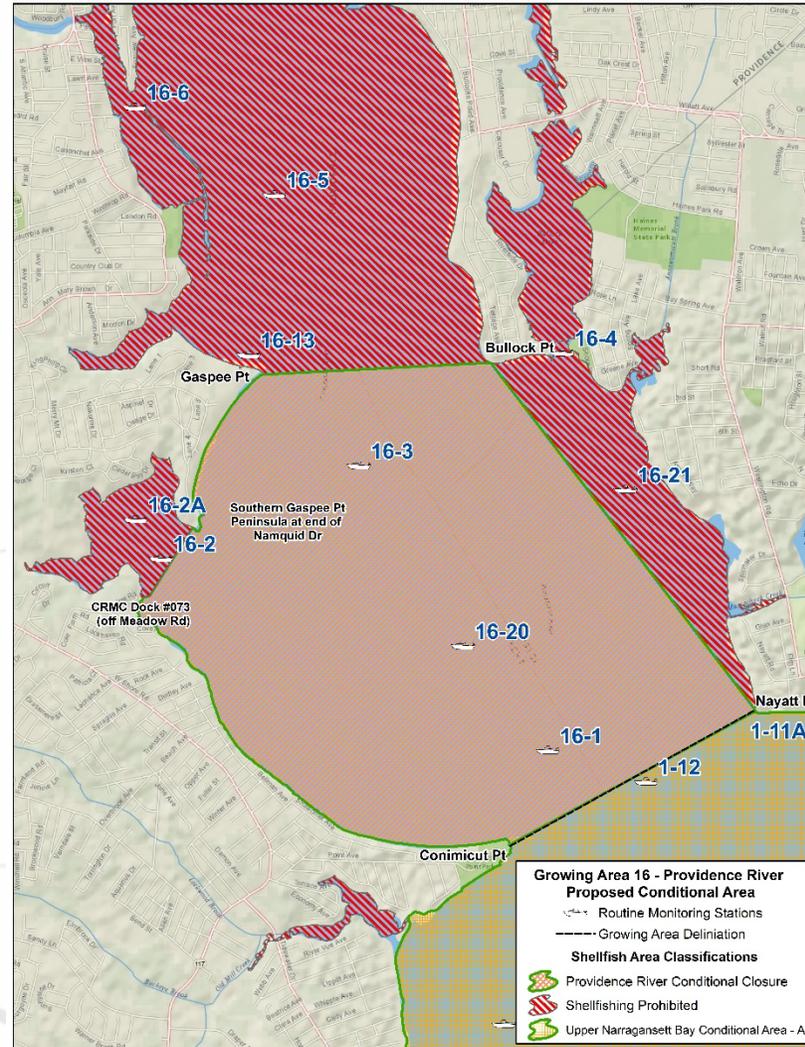
- Growing Area 16 – Providence River Water Quality Classification
- Presented to Shellfish Advisory Panel, October 23, 2019

# Tasks Remaining since last presentation:

- **Complete documentation of findings to demonstrate compliance with NSSP (including 2017 changes and FDA PEER review) on following:**
  - **WQ conditions and quality of shellfish suitable for managing waters as conditionally approved**
  - **Waters affected by potential Waste Water Treatment Facility failures**
  - **Documentation of other potential sources identified in 12 -Year Sanitary Survey**
  - **Conditional Area Management Plan:**
    - **Precipitation triggers**
    - **Length of conditional closure**
    - **Any WWTF performance standards that may trigger closures**
    - **Revised maps and closure descriptions**

# Working Map

Current  
**Proposed**  
Conditionally  
Approved  
GA16  
Providence  
River



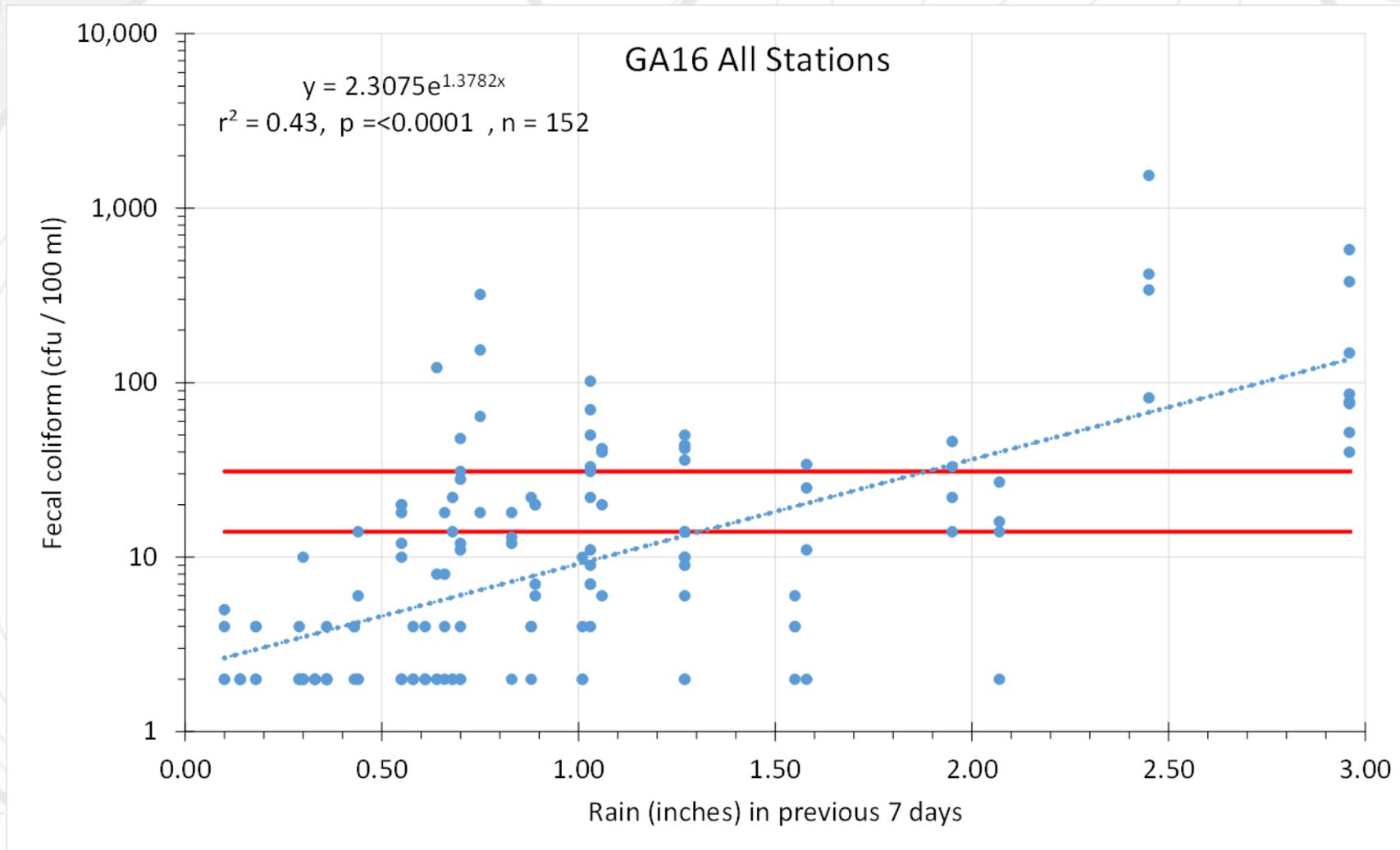
The water quality data that has been collected in support of re-classification of the lower Providence River indicate that the area currently **can not** support an approved classification.

2018 Statistical Analysis of most recent 30 all weather samples.  
(4/27/2017 or 6/7/2017 to 12/19/2018; 17 wet and 13 dry, all mTEC)

FECAL- CFU/100ml			GEO MEAN	90th Percentile (<31 cfu/100 ml)
Station Name	Status	N		
GA16-2	P	30	9.6	77
GA16-3	P	30	10.3	102
GA16-4	P	30	11.4	75.6
GA16-20	P	30	6	39.4

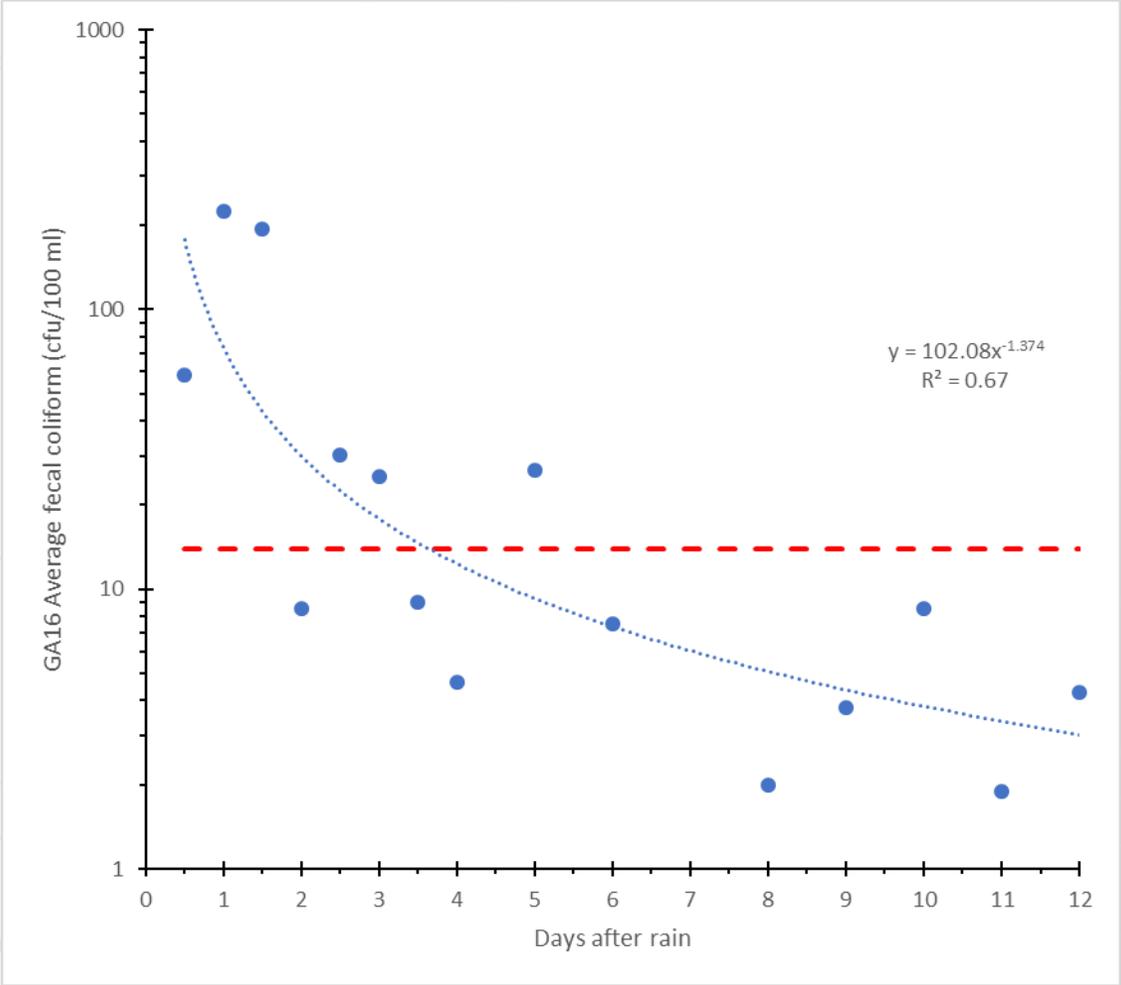
This area is impacted by WWTF, CSOs and other pollution sources that necessitate a **Conditionally Approved classification**

Also, due to shoreline sources and representativeness of the historic station locations (main channel versus closer to shoreline areas) additional data must be collected under all conditions. Until such time these areas will remain closed (prohibited) to shellfishing.



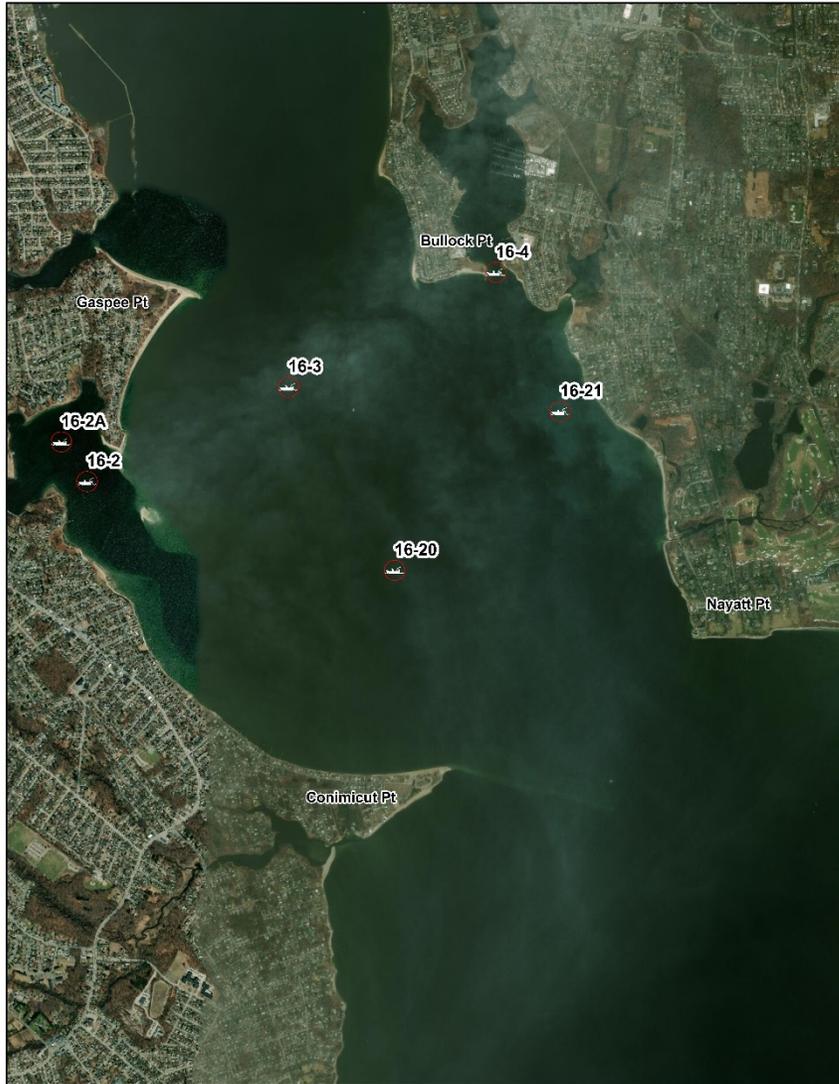
Regression analysis of rainfall amount in previous seven days at TF Green Airport and fecal coliform concentration at four stations (16-2, 16-3, 16-4, 16-20) in the lower Providence River.

Rain recovery



GA16 average recovery response after rainfall of greater than 0.5" in 24 hours.

## WQ conditions for managing waters as conditionally approved



**Water quality of the lower Providence River GA 16 – DRY Weather Statistics**  
**Geo mean must be less than 14 fc CFU/100ml**  
**Less than 10% of the samples must be less than 31 fc CFU/100ml**

Calculate statistics for GA16, 0.5", 7-day rain closure Conditionally Approved scenario						
Observations: 11/9/2017 to 10/3/2019						
Station 16-	2	3	4	2A	20	21
count	15	15	15	11	15	11
GeoMean	3-7	3-3	4-5	2.9	2.9	2.5
% grtr 31	0	0	0	0	0	0
Note only 11 observations @ 2A and 21						

Supports operating this area with a rainfall closure criteria of 0.5" of precipitation in a 24 hour period closed for 7 days



# Condition of shellfish in lower Providence River

## FDA Action Levels, Tolerances and Guidance Levels

Metals levels in quahaugs (ug/g wet weight) collected between Gaspee Point and Conimicut Point.

	DEM samples 2018	RIDOH (samples 80- 85)	Cullen	Thibeault/Bubly Associates (samples 85-86)
	4 locations one survey	3 locations 26-38 surveys 92 samples	2 locations 22 samples	4 locations, 2 surveys 80 samples
Arsenic <sup>1</sup>	✓			
Cadmium <sup>1</sup>	✓	✓	✓	✓
Chromium <sup>1</sup>	✓	✓		✓
Lead <sup>1</sup>	✓	✓	✓	✓
Mercury <sup>2</sup>				✓
Nickel <sup>1</sup>	✓		✓	✓
Copper		✓	✓	✓
Iron			✓	
Manganese			✓	
Zinc		✓	✓	✓

<sup>1</sup>2007 Guide for the Control of Molluscan Shellfish (values since removed, not replaced)

<sup>2</sup>2017 Guide for the Control of Molluscan Shellfish

Single highest quahaugs metals levels in samples collected between Gaspee and Conimicut Point versus FDA levels.

Cullen 1984 and Thibeault/Bubly Associates 1989 expressed as wet weight using 13% dry weight as measured and reported Quinn et. al. 1992

	Highest Sample DEM 2018	Highest Historic sample (samples 80 - 86)	% of FDA Level	
			DEM (2018)	Highest Historic
Lead	0.57	1.38	33.5%	81.2%
Cadimium	BDL	0.5538	BDL	13.8%
Chromium	4.09	1.443	31.5%	11.1%
Nickel	1.56	7.67	2.0%	9.6%
Mercury		0.0585	0.0%	5.9%
Arsenic	10.6		12.3%	

**Organic compounds in quahaugs (ug/g wet weight) collected between Gaspee Point and Conimicut Point. – all samples well below the FDA thresholds (PCBs, DDT or Chlordanes). Quinn et. al and Pruell et.al. based on 13% dry weight, as measured and reported Quinn et. al. 1992.**

	Highest Sample vs. FDA level (%)	Quinn (87-88)	Pruell et.al. (85-86)
		2 locations (2 surveys)	4 locations (2 surveys)
PCBs, sum <sup>2</sup>	3 %		✓
PCBs, Congeners 101, 138		✓	
DDT, sum <sup>2</sup>	0.05 %		✓
Chlordanes, Sum	0.7%		✓
PAHs, sum			✓
Fluorene		✓	
Pyrene		✓	
Substituted benzotriazoles (BZT), sum		✓	
Petroleum hydrocarbons (PHCs)		✓	
bis (2-ethylhexyl) phthalate (DEHP)		✓	
coprostanol (COP)		✓	

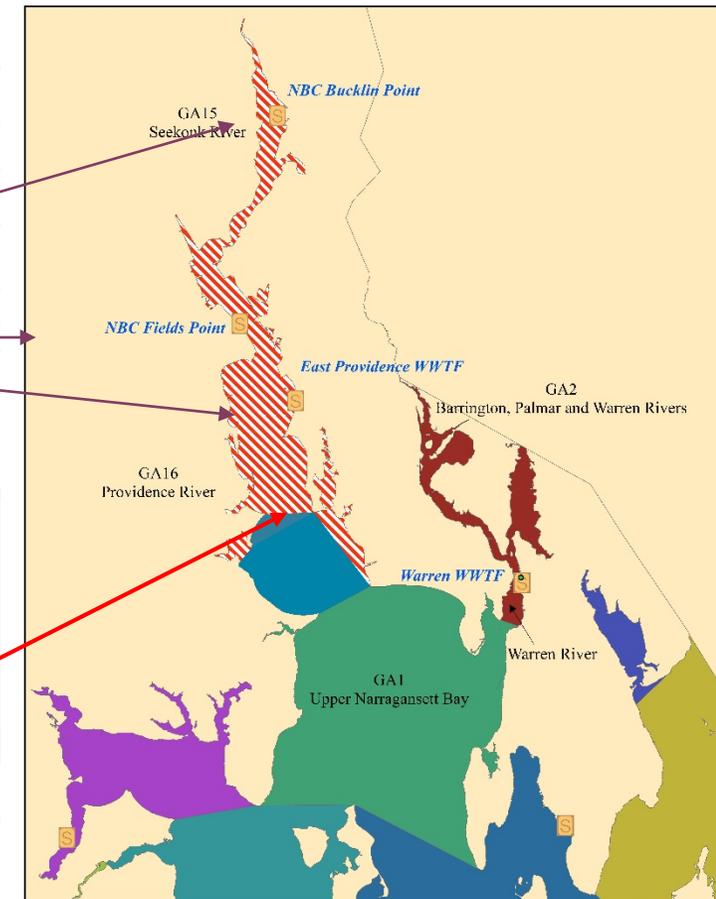
## Waters affected by potential Waste Water Treatment Facility failures and discharges

Impacts from upstream CSOs  
WWTF discharges

We have assessed the impacts in the rare event should there be a loss of disinfection or treatment upset at three WWTF that are upstream of this potential harvest area.

Based on this new analysis we will not need to institute a closure should a loss of disinfection occur, if there is a treatment failure an emergency closure will however still be necessary.

Otherwise the upper prohibited line between Gaspee and Bullocks Point will be protective



## Documentation of other potential sources identified in 12 -Year Sanitary Survey

Two areas of concern due to shoreline source impacts

### Occupessatuxet Cove

- Numerous tidal inlets from uplands
- Historic routine monitoring station not representative of inner cove
- Shoreline survey revealed elevated source bacteria levels



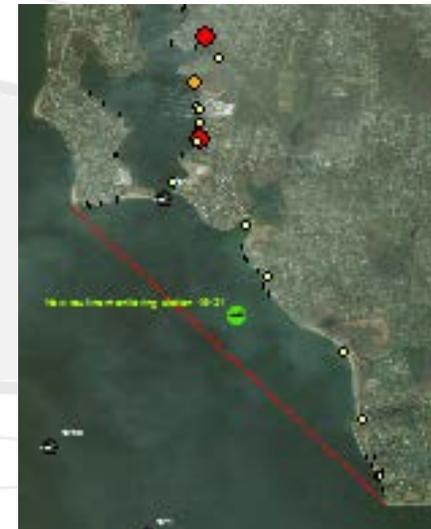
Added new monitoring station in cove

Continue to sample and evaluate sources

Reevaluate with additional data

### Eastern shore from Bullocks Point to Nyatt tower

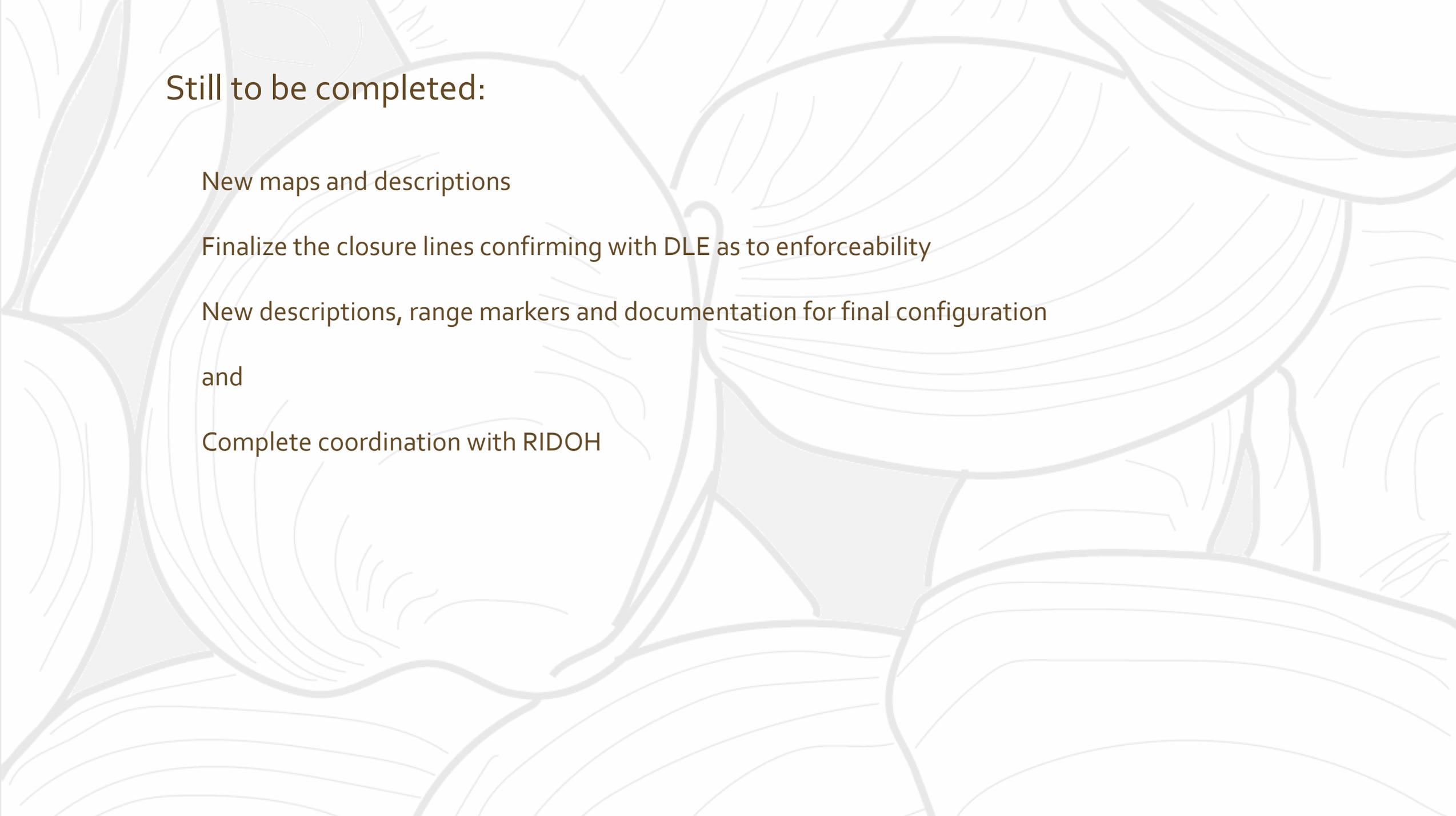
- Bullocks Cove marinas
- Numerous shoreline sources and tributaries with elevated bacteria levels



Added new monitoring station along eastern shore, may add others to north and south

Continue to sample and evaluate sources

Reevaluate with additional data



## Still to be completed:

New maps and descriptions

Finalize the closure lines confirming with DLE as to enforceability

New descriptions, range markers and documentation for final configuration

and

Complete coordination with RIDOH

# Shellfish Program updates

Training two new Marine Biologists

Addressed and implemented previous program deficiencies identified by FDA in our 2017 PEER  
2018 PEER NO DEFICIENCIES!!

As a result

Conditional Area Management Plans (CAMPS) were updated

Upper Narragansett Bay GA1 changes

>3" or back to back storms close to or exceeding 1.2" rain closure  
criteria will close the areas UNTIL FURTHER NOTICE

Limitations of existing data set

Reevaluating WWTFs

Warren WWTF emergency closure criteria

Revising/removing NBC CSO by pass closure criteria

MT Hope Bay Fall River WWTF CSO by pass closure trigger added to CAMP

Greenwich Bay emergency closure due to loss of disinfection at the East Greenwich WWTF

## **Currently evaluating large precipitation events in a 24 hour period and back to back events**

Setting upper rain limits for all areas

Delineating closure areas needed for emergency closures

Met with Salt Pond aquaculturists will schedule meeting to present findings

## **Lean efforts**

New Shellfish List Serve announcement

New shellfish web page to announce status of conditional and emergency closures

Phone line is still the means to get official closure information



## **Harmful Algae Bloom Monitoring and Contingency Plan**

# RI DEM & RI DOH HAB Monitoring

- Partnership: DEM-OWR, DEM-DMF, RI DOH
- Rationale:
  - HABs are uncommon natural events
  - Public health, FDA, NSSP requirement
  - Public confidence in RI shellfish quality & reputation
  - RI: Pseudo-nitzschia spp. (ASP), Dinophysis spp. (DSP), Alexandrium spp. (PSP)
- Strategy:
  1. HAB Phytoplankton monitoring; cells/L thresholds
  2. Qualitative analysis (Scotia rapid test) for ASP, DSP, PSP in plankton
  3. Quantitative analysis (LC-MS-MS) for ASP, DSP, PSP in sentinel shellfish
- <http://www.dem.ri.gov/programs/benviron/water/shellfish/pdf/habplan.pdf>



Rhode Island Department of Environmental

Management

and

Rhode Island Department of Health



Blue mussels (Credit: Meriseal)

**Harmful Algal Bloom and Shellfish Biotoxin Monitoring  
and Contingency Plan**

**August 2017**

# 1. Are cells present?: HAB phytoplankton thresholds

**Table 4 HAB phytoplankton contingency threshold abundances.**

HAB Taxa	Biotoxin	Shellfish Syndrome	Abundance threshold
<i>Alexandrium</i> spp.	Saxitoxins	Paralytic Shellfish Poisoning (PSP)	1,000 cells L <sup>-1</sup>
<i>Dinophysis</i> spp.	Okadaic Acid	Diarrhetic Shellfish Poisoning (DSP)	30,000 cells L <sup>-1</sup>
<i>Pseudo-nitzschia</i> spp.	Domoic Acid	Amnesic Shellfish Poisoning (ASP)	20,000 cells L <sup>-1</sup>

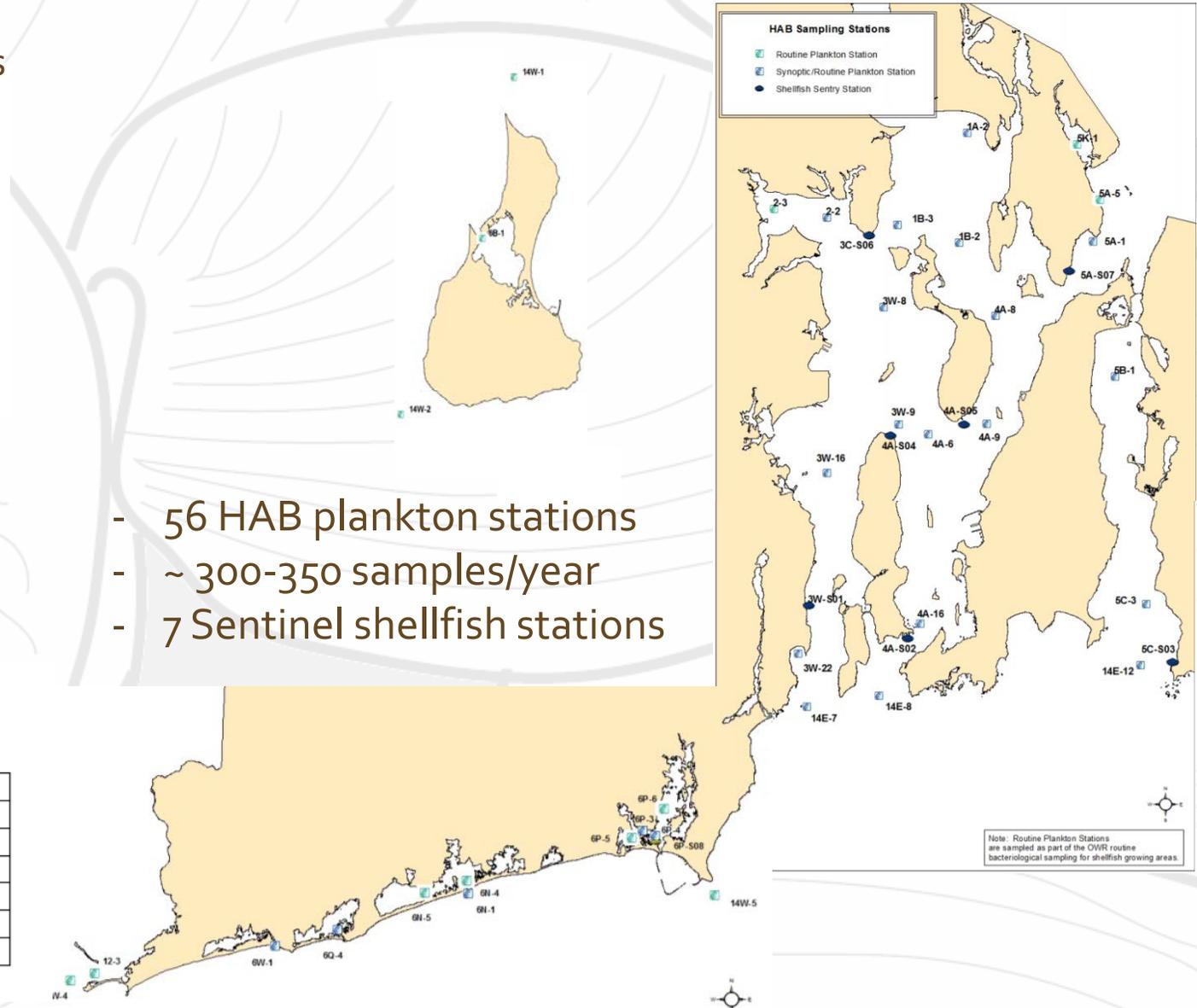
# 2. Are cells producing biotoxins?

# 3. Is biotoxin in shellfish?



**Table 5 Shellfish meat biotoxin concentration contingency levels for PSP, DSP and ASP (after NSSP, 2015).**

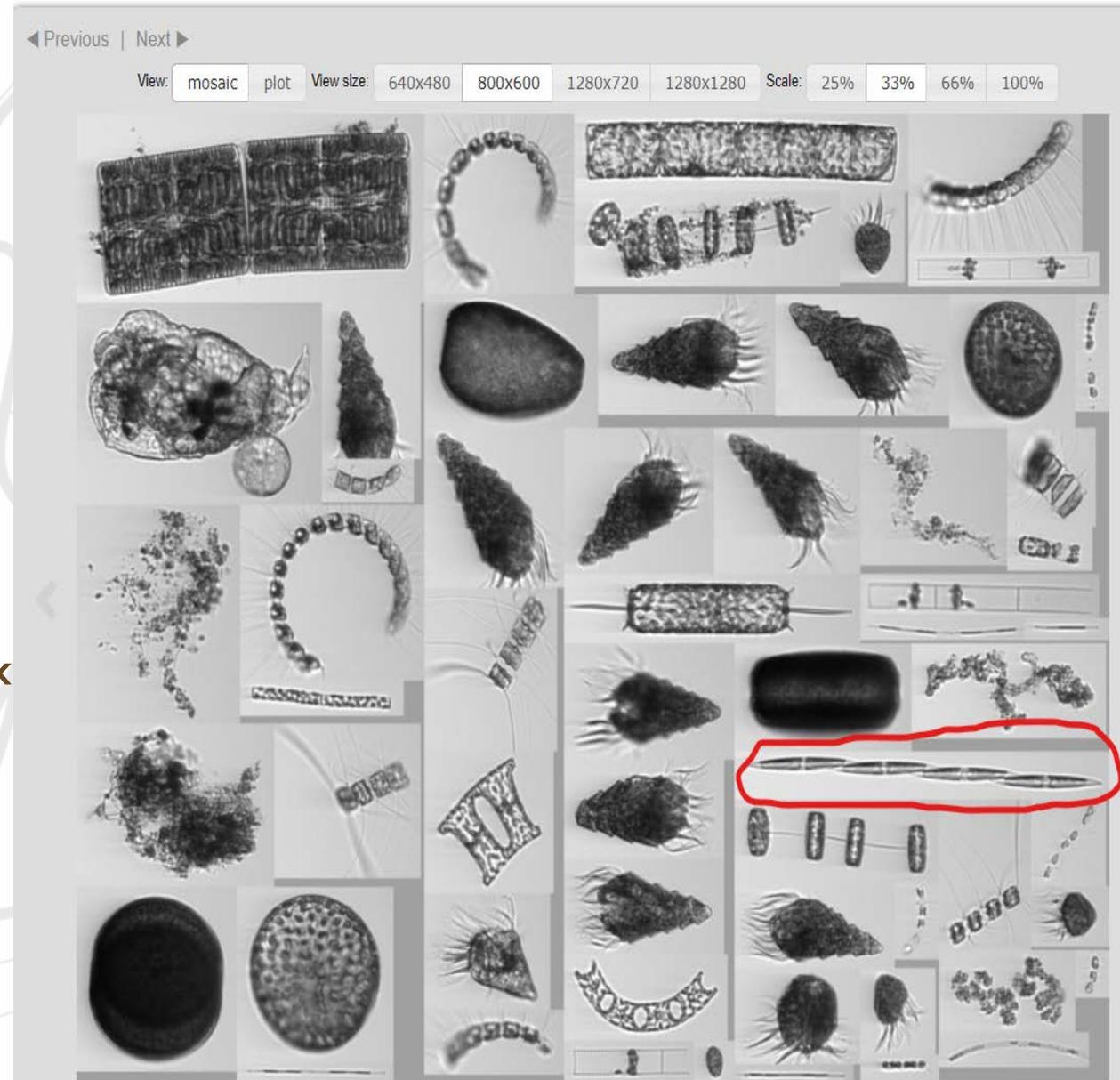
Toxin	Concentration	Action
Saxitoxin (PSP)	0.40 – 0.79 ppm	Precautionary Closure
Saxitoxin (PSP)	>/=0.80 ppm	Mandatory Closure
Okadaic Acid (DSP)	>0.08 – 0.15 ppm	Precautionary Closure
Okadaic Acid (DSP)	>/=0.16 ppm	Mandatory Closure
Domoic Acid (ASP)	10 – <20 ppm	Precautionary Closure
Domoic Acid (ASP)	>/=20 ppm	Mandatory Closure



- 56 HAB plankton stations
- ~ 300-350 samples/year
- 7 Sentinel shellfish stations

# RI DEM & RI DOH HAB Monitoring

- Since 2016 HAB Plan Revision:
  - 300-350 HAB phytoplankton samples annually @ 56 stations Narragansett Bay, Salt Ponds, Block Island
  - Additionally: partnership with Universities, other agencies
    - URI-GSO plankton time-series, weekly observations at Fox Island
    - URI-GSO IFCB, 'plankton camera' at GSO dock
    - NBC Bi-weekly phytoplankton monitoring
  - Sentinel shellfish (blue mussels) in cages at 7 locations
    - URI-GSO, Ft Wetherill, Sakonnet, Conanicut Pt, Prudence Island, Warwick Neck, Roger Williams University



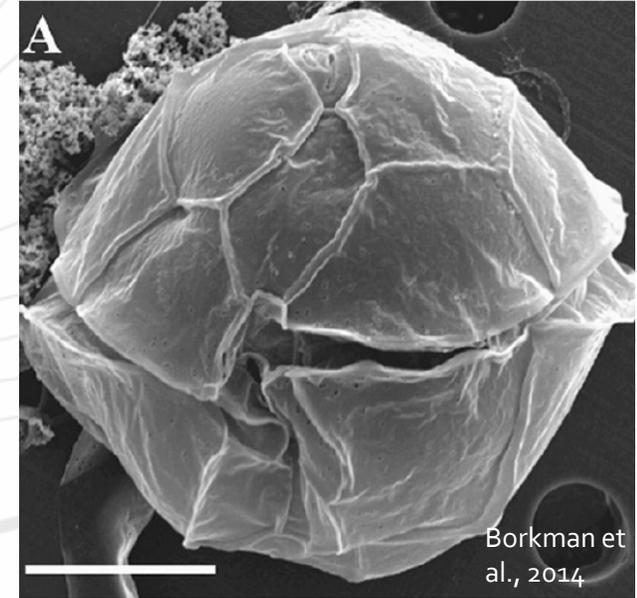
page 1, showing 60 of 2871 target(s)

[http://phyto-optics.gso.uri.edu:8888/GSODock/D20191022T141441\\_IFCB120](http://phyto-optics.gso.uri.edu:8888/GSODock/D20191022T141441_IFCB120) (about 4 hours ago)

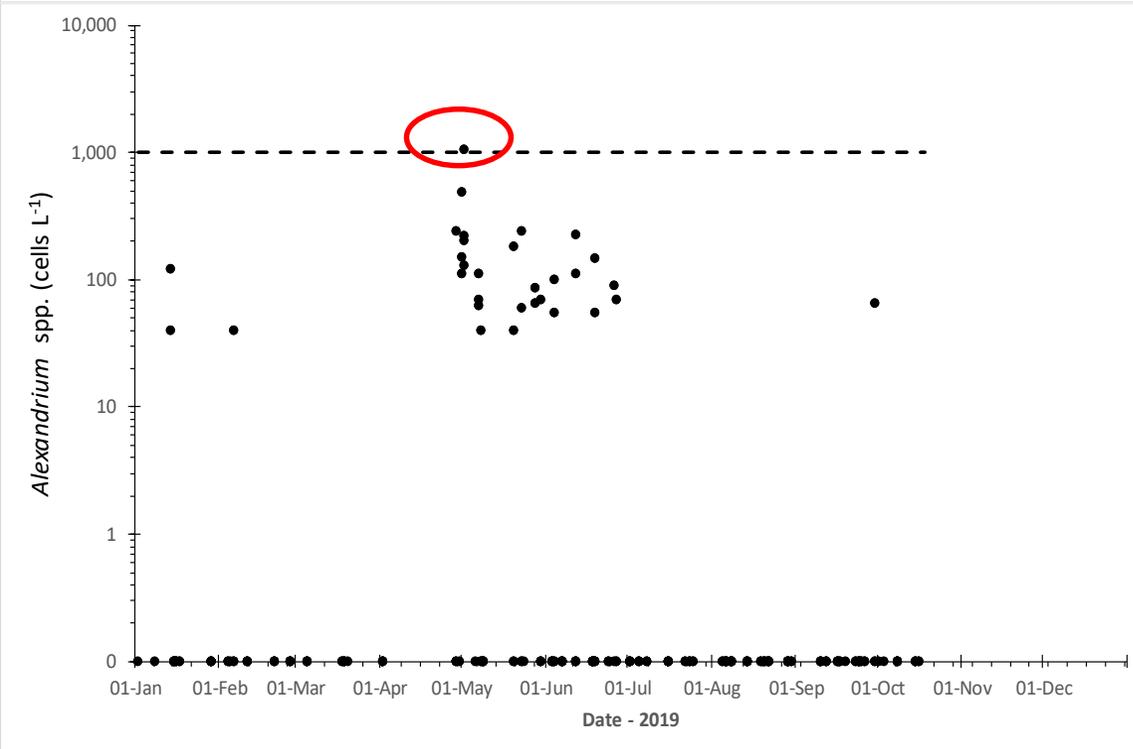
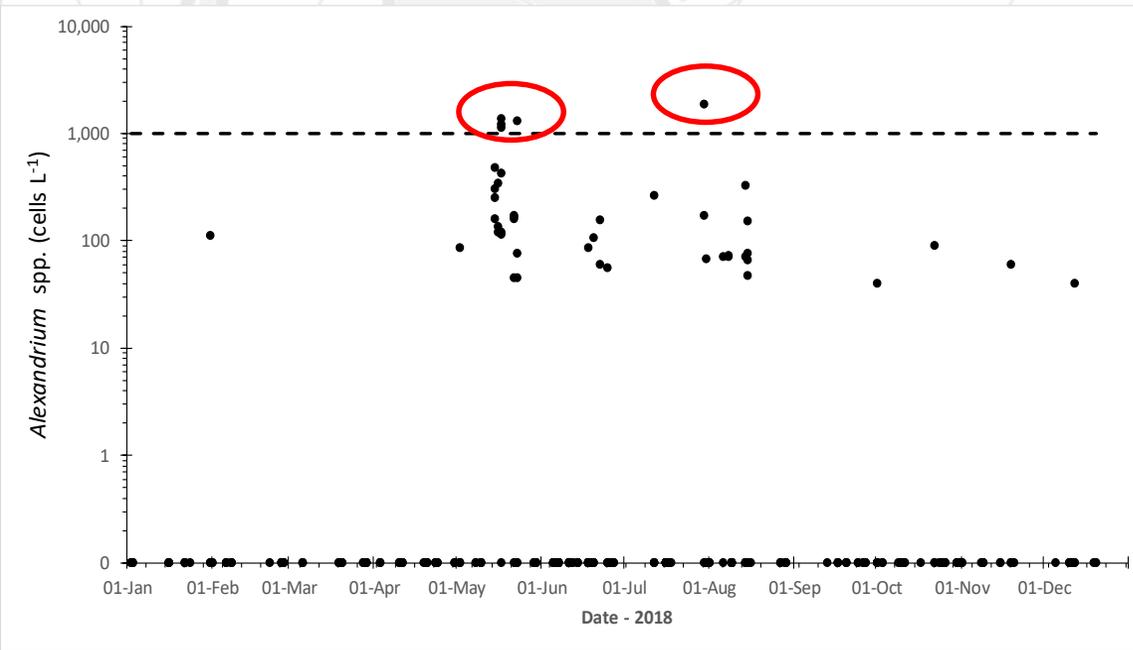
Download: [ADC](#) [HDR](#) [ROI](#) [CSV](#) [ZIP](#) [XML](#) [RDF](#) [blobs](#) [ZIP](#) [features](#) [CSV](#) [autoclass](#) [CSV](#) [comment\(s\)](#)

URI-GSO, IFCB images

- Alexandrium spp. (PSP)
- Uncommon in RI, ~15% of samples
- Low abundance
- No evidence of STX



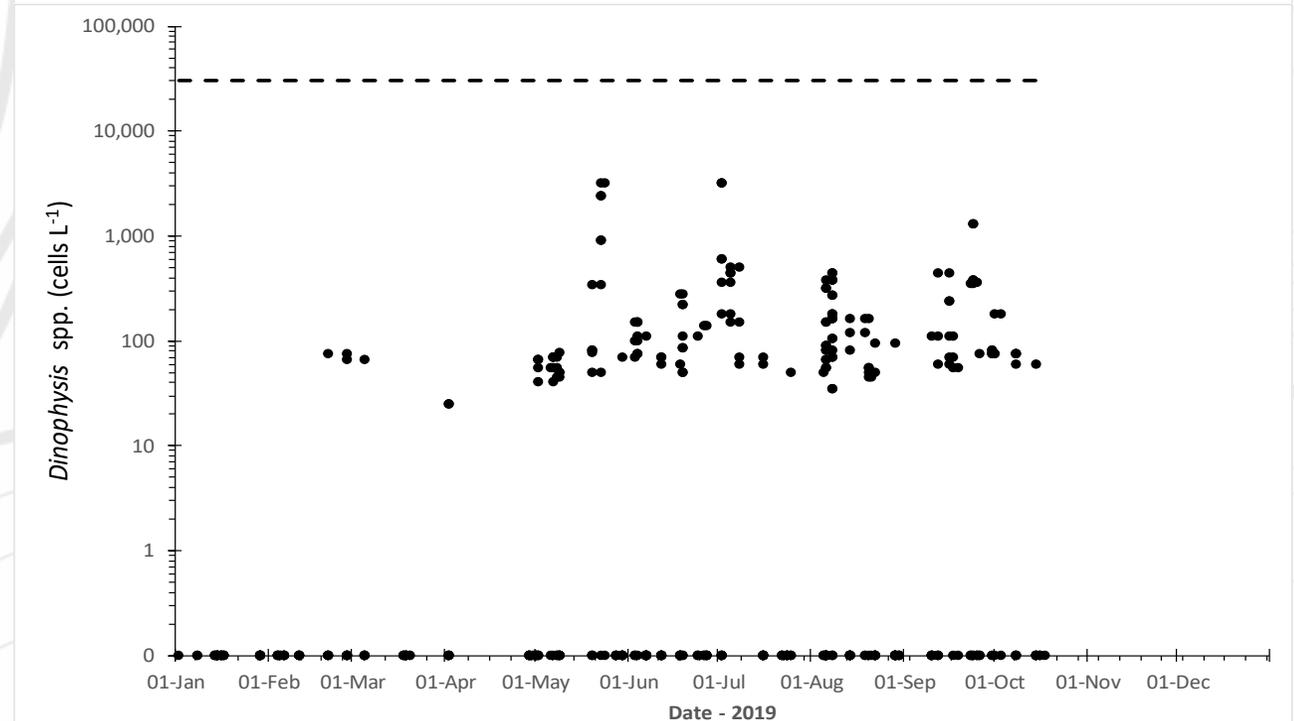
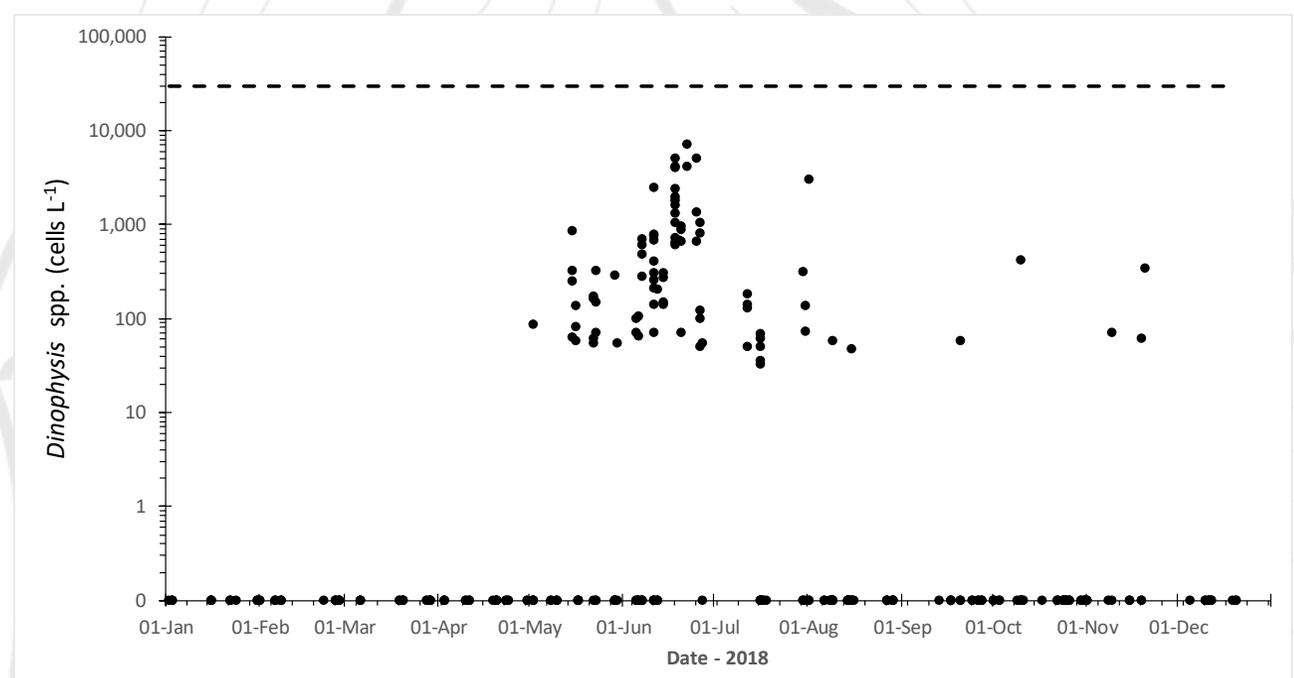
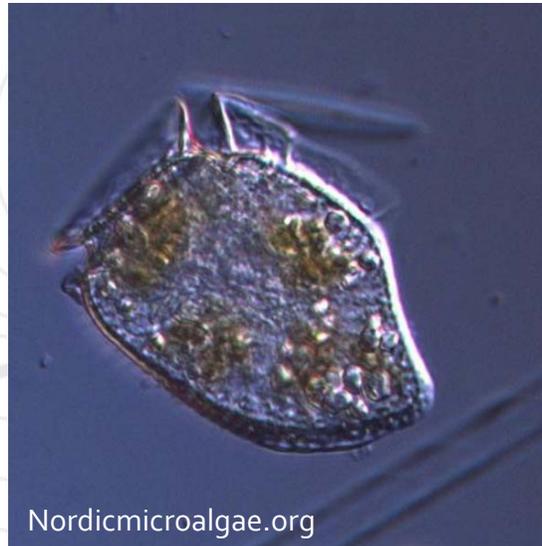
	2018	2019
# samples Alex present (%)	51 (17%)	31 (13%)
# samples Alex exceed threshold	4 (May) 1 (July)	1 (May)
# samples detect PSP in plankton	0/5	0/1
# shellfish meat tests	0	0
# shellfish meat tests exceed 80 ppm STX	0	0

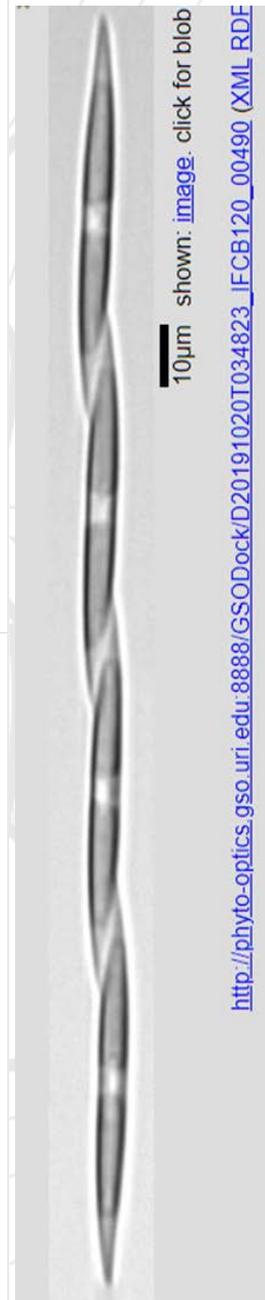
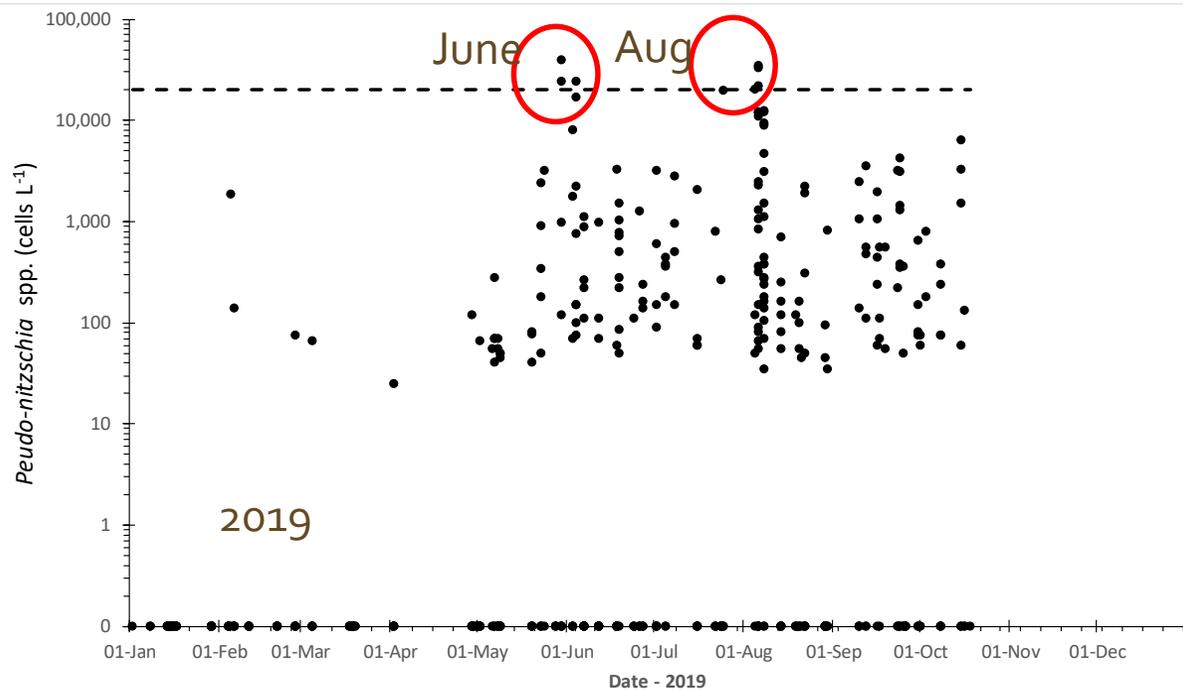
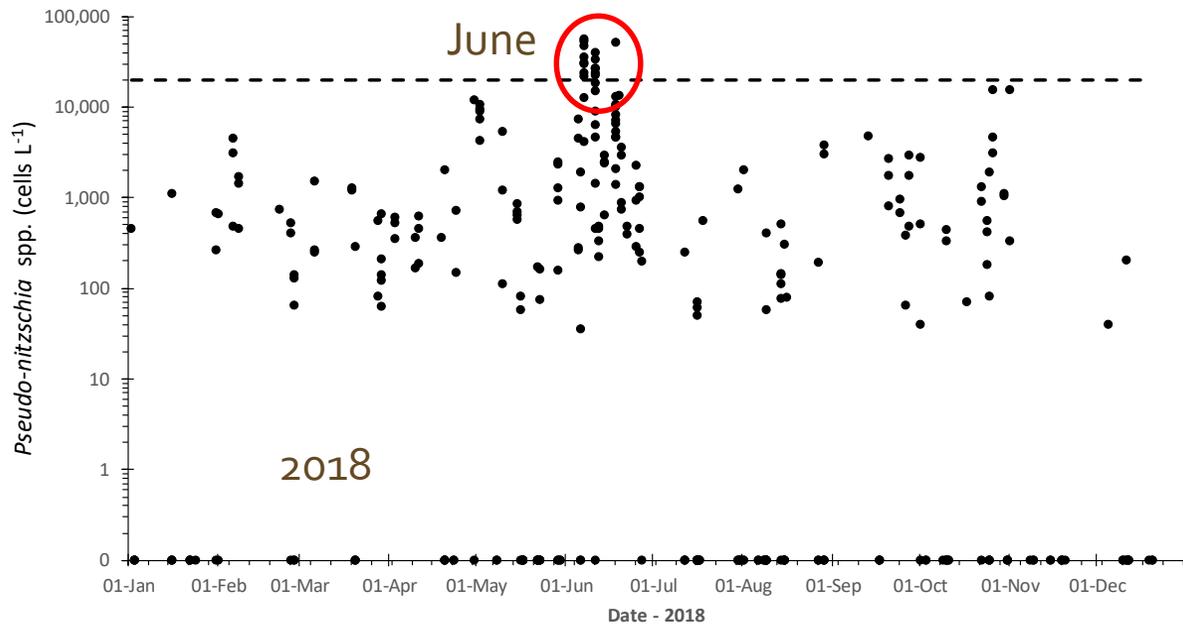


# Dinophysis spp. (DSP)

- Common in summer/fall
- Low abundance
- Low DTX in RI clones

	2018	2019
# samples Dphy present (%)	86 (28%)	83 (36%)
# samples Dphy exceed threshold	0	0
# samples detect DSP in plankton	0	0
# shellfish meat tests	0	0
# shellfish meat tests exceed DTX limit	0	0





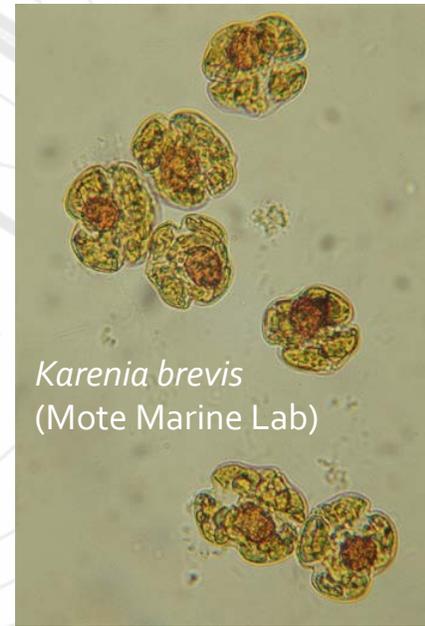
*Pseudo-nitzschia* 2018 & 2019:

	2018	2019
# samples P-n present (%)	183 (59%)	105 (46%)
# samples P-n exceed threshold	15 (June)	3 (June) 4 (Aug)
# shellfish meat tests	8 (June)	4 (June) 2 (Aug)
# shellfish meat tests exceed 20 ppm DA	0	0

- P-n common in RI waters, historically and recently
- Abundance peaks in June, August
- No Closures 2018 & 2019
- The system works!
  - detect abundance, DA production
  - Protects public health

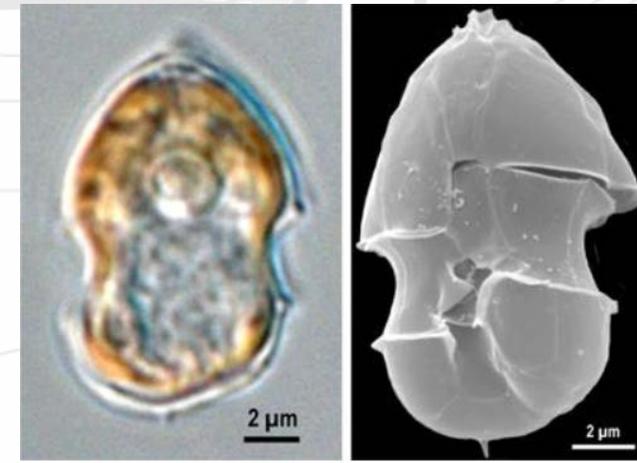
# FDA required HAB plan updates 2020:

- Monitor 'emerging' HAB species:
  - *Karenia brevis* (dinoflagellate, NSP in Gulf of Mexico, NC)
  - *Azadinium* spp. (dinoflagellate, AZP in Europe, East Coast Canada)
- Modify re-opening criteria for *Alexandrium* (PSP) closures:
  - Current: two (2) sets of shellfish meats collected over a 7-day period show acceptable biotoxin levels. (*approx. 9 days*)
  - FDA change: three (3) samples over a 14-day period show acceptable biotoxin levels. (*approx. 16 days*)
  - Intend to accept PSP reopening change (3 samples, 14 days)
  - Intend no change in ASP re-opening criteria (2 samples 7 days)



*Karenia brevis*  
(Mote Marine Lab)

*Azadinium spinosum*  
(Tillman et al 2009)



# Shellfish Advisory Panel

October 23, 2019; 4:30PM

URI Bay Campus, Coastal Institute Building, Hazard Conference Room  
218 S Ferry Road, Narragansett, RI 02874

## MEETING SUMMARY

RIMFC members: K. Eagan (Chair)

DEM: A. Gerber-Williams, C. McManus, J. McNamee, D. Erkan, K. Rodrigue, C. Hannus, A. Liberti, D. Borkman, S. Engborg;

RIDOH: C. White

CRMC: D. Beutel

SAP members: M. McGiveney, M. Sousa, G. Schey, B. Rheault, J. McDonald, K. Murgo, R. Pastore, E. Troiano;

Public: M. Wade, E. Everich, J. Scappatura, B. Pinsky, B. Eastman, D. Eagan, T. Richard, M. Kearns, J. King, D. Brown, J. Johnson, J. Boyd, O. Kelley;

### 1. Review of aquaculture applications sent to Public Notice:

- 2019-01-063, Richard and Pinheiro, West Passage: *D. Beutel* provided a brief overview of the proposal, which consists of a two-acre lease for oysters and sugar kelp near Rome Point. *D. Beutel* explained that a site assessment was performed on July 7, 2019, at which time there was no eelgrass or quahogs found. *R. Pastore* expressed concern about floating gear obstructing boat access and suggested that the site be moved further north of Rome Point. *M. McGiveney* stated that the RI Shellfishermen's Association do not have concerns over the proposed site location. *J. King* questioned whether there is a current aquaculture management plan for the bay, similar to the salt ponds – stating that issues of overcrowding, such as at Rome Point, could be better guided with such a document. **Motion made by *J. McDonald* to recommend no objection to the application; 2<sup>nd</sup> by *B. Rheault*. The motion failed 2-5 with 1 abstention from *M. McGiveney*.**
- 2019-07-003, Scappatura, Quonochontaug Pond: *D. Beutel* provided a brief overview of the proposal, which consists of expanding a current lease by 4.4 acres. The expanded site would be for bottom planted oysters only. CRMC received four objections from residents along Quonochontaug Pond with concerns raised about navigation. *D. Beutel* stated that CRMC has no concerns with navigation around the site and that if the expansion is to be approved the pond would be at 2.5% aquaculture use. *J. Scappatura* explained her need to expand and stated that she has no intentions of adding floating gear to the expanded area, when asked by *M. Sousa* whether she intends to make further changes to the site

operation in the future. *J. Scappatura* further stated that she uses 50% diploid and 50% triploid oysters on her lease so as to prevent cross breeding with potential wild populations. **Motion made by *M. McGiveney* to recommend no objection to the application; 2<sup>nd</sup> by *R. Pastore*. The motion passed with a unanimous vote of 8-0.**

## **2. Providence River re-classification presentation from the RIDEM Office of Water Resources.**

*C. Hannus* presented an update on the status of the Providence River re-classification by the Office of Water Resources. Water quality and shellfish within the southern section (south of a line between Gaspee and Bullocks Point) of the Providence River (with the exception of Occupessatuxet Cove and the eastern shore from Bullocks Point to Nyatt Tower) meets requirements for managing waters as conditionally approved. Due to the impacts of waste water treatment facilities (WWTF), combined sewer overflows (CSO), and other pollution sources, the conditional area would be closed after a 24-hour rainfall of 0.5" or greater. Additionally, their analysis showed that should a loss of upstream WWTF failure an emergency closure would be necessary. *C. Hannus* further explained that poisonous and deleterious substances within shellfish samples from the lower Providence River were within FDA standards. The next steps were addressed, which included updating maps and descriptions, finalize the closure lines with the Division of Law Enforcement, documenting new descriptions and range markers, and coordinating with RIDOH for completion. *J. King* expressed concerns over metal concentrations in proposed area and potential associated risks. *J. King* also stated that larval supplies could be depleted once the Providence River is open to shellfishing and does not want to see the important brood stock for southern sections of the bay disappear.

## **3. Providence River shellfish management area presentation by the RIDEM Division of Marine Fisheries.**

*J. McNamee* presented an updated version of the RIDEM Division of Marine Fisheries' quahog stock assessment model, which included data inputs from previous assessments and the most recent results. *J. McNamee* explained how the model would be used to inform a prospective Providence River Shellfish Management Plan by simulating various harvest scenarios for determining the best management practice for protecting sustainability of the resource. *J. King* suggested harvesting from the Providence River during winter months when quahogs filtering is reduced so as to minimize pollution absorption and consumption by consumers.

## **4. Shellfish transplants.**

*J. McNamee* presented an update on the status of shellfish transplants stating that there is \$20,000 available for transplants with some of those monies being allowed for seed purchase. It was also proposed that a Providence River transplant in the spring of 2020 would be both beneficial for stock assessment and relocation of brood stock. *A. Gerber-Williams* explained that only Bristol Harbor is currently approved for transplants into and additional transplant locations must have proper documentation and testing performed prior to transplant. A request for preferred locations to transplant into was opened up for

discussion. *M. McGiveney* stated that \$30,000 would be a more accurate cost to perform a transplant. He also said that the MOU between RISA and RIDEM would need to be renewed. *M. McGiveney* along with others agreed that transplanting from the Providence River and into the Greenwich Bay spawner sanctuary would be their top selection.

#### **6. Shellfish classification program updates and summary of Harmful Algae Bloom protocol and monitoring results by Office of Water Resources.**

*C. Hannus* presented the Office of Water Resources Shellfish Program updates, which included reevaluating waste water treatment facilities (WWTF). The Warren WWTF during a loss of disinfection will cause an emergency closure. A Mount Hope Bay Fall River WWTF CSO bypass closure trigger was added to the Conditional Area Management Plan. Greenwich Bay now has an emergency closure due to loss of disinfection at the East Greenwich WWTF.

*C. Hannus* announced efforts to improve communication of closures. There will be a new shellfish list serve and web page status updates in addition to the current phone message updates.

*D. Borkman* of the Office of Water Resources presented updates on the HAB monitoring program with their partners at the Division of Marine Fisheries and Department of Health, which included information on their sampling stations, sample collection, and analysis. The FDA requires a HAB plan update from the shellfish program in 2020.

#### **5. Present new tagging area maps and tagging labels.**

*A. Gerber-Williams* presented proposed updates for designated tagging areas and their labels. Restructuring these areas is intended to reduce the total area closures during a HAB event, particularly in the West Passage (3W) and East Passage (4A). The proposed tagging area labels would also be changed to match the growing area designations by the Office of Water Resources. The new maps were previously agreed upon by the Office of Water Resources and the Division of Law Enforcement. Endorsement of the maps was implied with the exception of one modification, which was made a motion. **Motion made by *G. Schey* to recommend to DEM and the RIMFC to merge Greenwich Bay tagging areas 2A and 2B; 2<sup>nd</sup> by *M. McGiveney*. The vote passed 6-0.**

*Prepared by: A. Gerber-Williams*



State of Rhode Island and Providence Plantations  
**Coastal Resources Management Council**  
Oliver H. Stedman Government Center  
4808 Tower Hill Road, Suite 3  
Wakefield, RI 02879-1900

(401) 783-3370  
Fax (401) 783-2069

### PUBLIC NOTICE

File Number: 2019-01-063

Date: February 13, 2019

This office has under consideration the application of:

Therman Richard & Justin Pinheiro  
80 Spanker Street  
Jamestown, RI 02835

for a State of Rhode Island Assent to construct and maintain: a two acre oyster farm using floating gear and to grow kelp on suspended longlines. Please see attached map.

Project Location:	West Passage, Narragansett Bay
City/Town:	North Kingstown
Plat/Lot:	/
Waterway:	West Passage Narragansett Bay

Plans of the proposed work may be seen at the CRMC office in Wakefield.

In accordance with the Administrative Procedures Act (Chapter 42-35 of the Rhode Island General Laws) you may request a hearing on this matter.

You are advised that if you have good reason to enter protests against the proposed work it is your privilege to do so. It is expected that objectors will review the application and plans thoroughly, visit site of proposed work if necessary, to familiarize themselves with the conditions and cite what law or laws, if any, would in their opinion be violated by the work proposed.

If you desire to protest, you must attend the scheduled hearing and give sworn testimony. A notice of the time and place of such hearing will be furnished you as soon as possible after receipt of your request for hearing. If you desire to request a hearing, to receive consideration, it should be in writing (**with your correct mailing address, e-mail address and valid contact number**) and be received at this office on or before March 13, 2019.

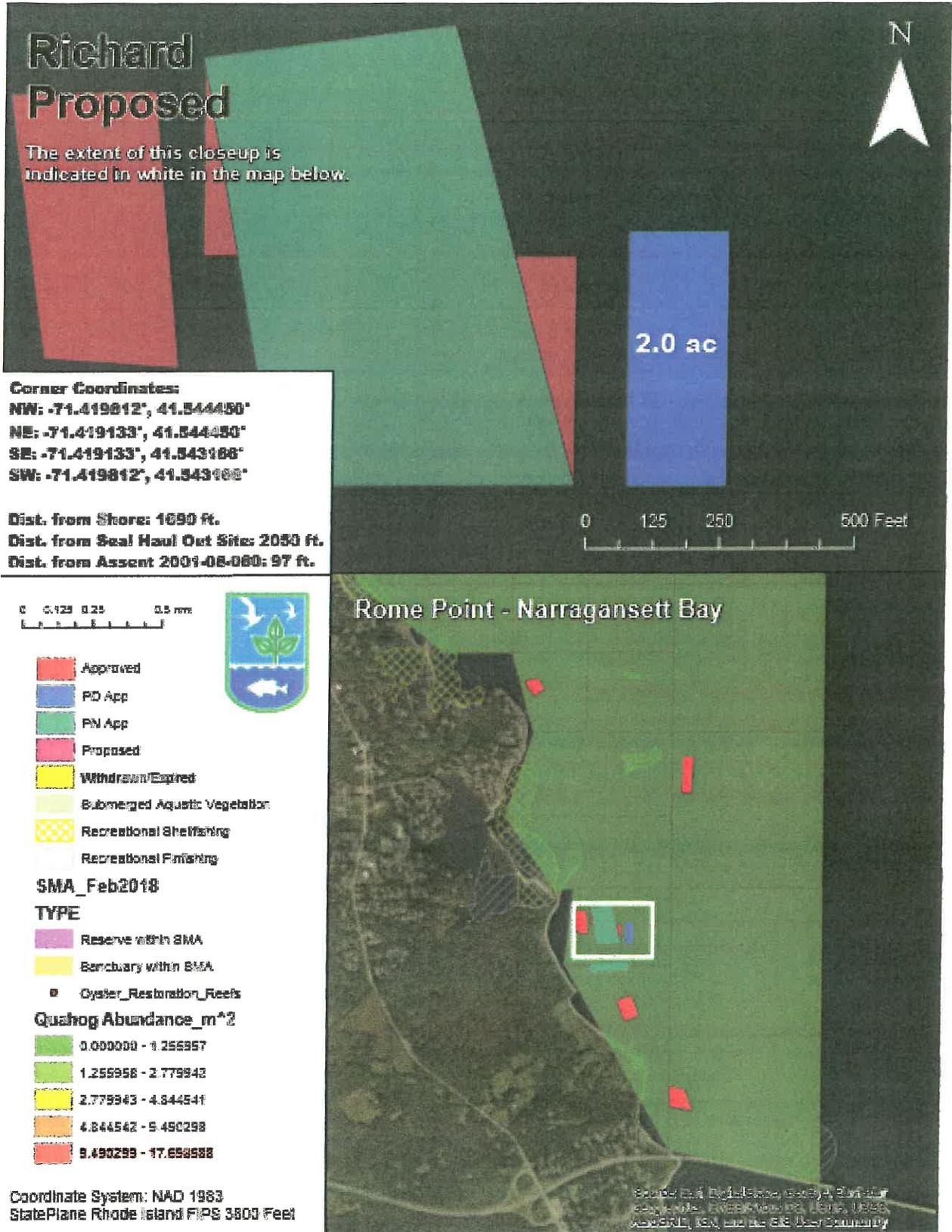


Figure 1: Site Location

RECEIVED  
 JAN 22 2019  
 COASTAL RESOURCES

RHODE ISLAND COASTAL RESOURCES MANAGEMENT COUNCIL  
REPORT OF FINDINGS -- PRELIMINARY DETERMINATION

**STATEMENT OF LIMITATIONS**

The contents of this staff determination report shall be valid only for the period on and preceding the date of this report. This report is neither an approval nor denial of the subject proposal. It is an evaluation of CRMC regulations in effect as of December 31, 2018 as they pertain to the below stated proposal, including preliminary staff recommendations.

Modifications to the below stated proposal may, upon the discretion of the CRMC, render this determination null and void.

**APPLICANT INFORMATION**

**NAME:** Therman Richard & Justin Pinheiro **CRMC FILE NO.** D2018-10-069

**LOCATION/POLE:** Narragansett Bay

**CITY/TOWN:** Narragansett

**CONTACT PERSON(S) & ADDRESS:**

Therman Richard & Justin Pinheiro  
80 Spanker Street  
Jamestown, RI 02835

**PRELIMINARY REVIEW INFORMATION**

**PROPOSAL:** Two acre oyster and sugar kelp farm

**PLAN(S) REVIEWED:** Richard/Pinheiro October 2018

**INVESTIGATOR** Beutel **DATE** December 13, 2018 **TIME** 3:00 pm

**MEASUREMENTS & OBSERVATIONS:**

**PREVIOUS CRMC ACTIONS FOR SITE:**

**Preliminary Buffer and Setback Requirements:**

**SETBACK** (ref. Section 1.1.7 CRMP)

**BUFFER** (ref. Section 1.1.9 CRMP)

Note: **Setbacks** apply to "construction related activities" including filling, removing, and grading (ref: Section 1.3.1(B) CRMP). The coastal program requires a minimum setback of either 50', or the buffer zone width plus 25' (whichever is greater). Work within this minimum setback will require a variance per Section 1.1.5 of the CRMP. All variances must be requested in writing. No construction or construction related work shall occur within the required setback (exemptions include structural shoreline protection, outfalls and water dependant uses). Work within the required setback may require a Category "B" review (public notice and decision by the full coastal council) and would likely result in adverse CRMC staff recommendations to the Coastal Council during the review process.

NAME: **Pinheiro**

CRMC FILE NUMBER: **D 2018-10-069**

**Buffer zones** are areas that must be retained in, or allowed to revert to, "an undisturbed natural condition." All structures (excluding accessory structures) should be setback a minimum of 25' from the buffer zone to allow for access, fire protection and maintenance without infringement into the buffer.

If **applicable**, the plan must show "area of land within 50 feet" in accordance with Rule 5.04 of The Rules and Regulations Governing the Protection and Management of Freshwater Wetlands in the Vicinity of the Coast (the Rules), and label this area as a "buffer zone" in accordance with Rule 5.14. In addition, no activities (such as: drainage, grading, filling, etc.) may affect the freshwater wetland or the buffer zone. Where such alterations occur, or are proposed, an application shall be submitted in accordance with CRMC's Freshwater Wetland Rules.

Coastal feature verification shall be valid for one-year from the date of this Determination or until an erosion event (e.g., due to storm event, landslide, man-induced alteration, etc.) occurs that alters the coastal feature.

### SUMMARY OF FINDINGS

**CRMC JURISDICTION: YES**

**TYPE WATER: 4; Multi-Purpose Waters**

**Applicability of CRMP and SAM Plans (as amended):**

CRMP Sections: 1.2.1(E); 1.3.1(A)(K)(R)

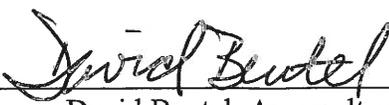
### STAFF CONCERNS/COMMENTS/INFORMATION REQUIREMENTS:

The preliminary determination meeting for this 2.0 acre oyster and kelp site using floating and submerged gear was held on December 13, 2018 at the North Kingstown Town Hall. The North Kingstown Harbor Commission had previously met with the applicant to discuss the proposal.

The project proposes up to 360 floating OysterGro cages secured in trawl lines of twelve cages. The five foot helical anchors proposed should be sufficient to hold twelve cages. The anchors are sufficient to hold the submerged kelp lines. Floating oyster cages and submerged kelp longlines are employed on adjacent aquaculture sites.

The Rome Point area is busy with other aquaculture sites. There are four existing aquaculture sites, another completing the public notice process, and this proposed site. The North Kingstown Harbormaster suggested re-orienting this site to be perpendicular to the layout proposed in the preliminary determination. The re-arrangement would minimize the site's protrusion offshore and is a valid suggestion. Please continue to work with Julia Livermore at RI Department of Environmental Management to create a map of the re-oriented site.

Birds roosting on floating cages is a potential issue but has not yet caused significant problems anywhere. However, bird deterrent strategies should be included in a full application. A full application should also include a proposed work schedule for each season of the year. A full application should include the use of reflective tape on high flyer markers that delineate the southern border of the site. It would be prudent to work with the CRMC and the Town of North Kingstown to create a consistent marking plan so that mariners could easily determine a path to the shoreline between the leases. The application should include the creation of a vibrio control plan, and clearly state the oyster seed purchase protocol.

SIGNATURE:   
David Beutel, Aquaculture Coordinator



**RHODE ISLAND**  
**DEPARTMENT OF ENVIRONMENTAL MANAGEMENT**

**DIVISION OF MARINE FISHERIES**  
3 Fort Wetherill Road  
Jamestown, RI 02835

**DIVISION OF FISH AND WILDLIFE**  
277 Great Neck Road  
West Kingston, RI 02892

February 27, 2019

David Beutel  
Aquaculture Coordinator  
Coastal Resources Management Council  
4808 Tower Hill Road  
Wakefield, RI 02879

Re: Richard and Pinheiro Application #2019-01-063

Dear Mr. Beutel,

The Rhode Island Department of Environmental Management, through the Division of Fish and Wildlife (DFW) and Division of Marine Fisheries (DMF), has received and reviewed the application submitted by Therman Richard and Justin Pinheiro for a proposed 2.0-acre aquaculture lease in the near Rome Point for cultivating eastern oysters (*Crassostrea virginica*) and sugar kelp (*Saccharina latissima*) using floating and suspended gear. The site will be active year-round, with oysters May 1 – October 3 and kelp November 1 - April 30.

The DMF and DFW believe that the adverse impacts to marine fisheries and wildlife and their habitat from this prospective site would be minimal. While the rocks off Rome Point are a well-documented and heavily used harbor seal haul-out site (STB 2017, Raposa and Dapp 2009), the DFW does not believe that the aquaculture site in question will disturb the seals. NOAA Fisheries recommends staying at least 50 yards from seals by land or sea in order to avoid Level A Harassment under the Marine Mammal Protection Act (NOAA Fisheries 2016, STB 2017). The distance at which seals become alert and begin to move towards the water can be as much as 500–800m (Henry & Hammill 2001, Wilson et al. 2011), though the actual distance at which most flushing to the water occurs has varied from study site to site, but has been given as approximately <100m (Wilson 2013, Allen et al 1984, Jackson & Wilson 1990, Calambokidis et al 1991, Brown & Prior 1998, Suryan & Harvey 1999, Henry & Hammill 2001, Johnson & Acevedo 2007, Fox 2008, Jansen et al 2010). Proposed assent 2019-01-063 is 2050 feet (624 m) from the haul-out site (Figure 1). Although the aquaculture site potentially falls within a range where human activity may attract the attention of hauled-out seals, it is unlikely to cause flushing activity and excess energy expenditure. Therefore, aquaculture activities within the lease area are unlikely to harm the seals.

As such, the DFW and DMF do not have objections to this application. The Divisions' acceptance of the current proposal is specific to the location and specifications outlined in the application.

Sincerely,

A handwritten signature in black ink, appearing to read "Dean Hoxsie". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Dean Hoxsie,  
Deputy Director for Natural Resources



## References:

Allen SG, Ainley DG, Page GW and Ribic CA. 1984. The effect of disturbance on harbour seal haul out patterns at Bolinas Lagoon, California. *Fish. Bull.* 82(3): 493–499.

Brown EG and Prior A. 1998. Recreational disturbance to breeding seabirds and seals on Mousa, SSSI. Report to Scottish Natural Heritage, Contract no: HT/97/98/33.

Calambokidis J, Jeffries SJ, Huber H, Steiger G and Evenson J. 1991. Censuses and disturbance of harbor seals at Woodward Bay and recommendations for protection. Final report prepared for Washington Department of Natural Resources, Olympia, Washington by Cascadia Research Collective, Olympia, Washington and Washington Department of Wildlife.

Fox, KS. 2008. Harbor seal behavioural response to boaters at Bair Island refuge. Master's theses, paper 3591, San Jose State University.

Henry E and Hammill MO. 2001. Impact of small boats on the haulout activity of harbour seals (*Phoca vitulina*) in Métis Bay, St Lawrence Estuary, Québec, Canada. *Aquatic Mammals* 27(2): 140–148.

Jackson, DB and Wilson SC. 1990. Tees Seals programme: the feasibility study. Final report to Teesside Development Corporation. David Bellamy Associates.

Jansen JK, Boveng PL, Dahle SP and Bengtson JL. 2010. Reaction of harbour seals to cruise ships. *J. Wildlife Management* 74(6): 1186–1194.

Johnson A and Acevedo-Gutiérrez A. 2007. Regulation compliance by vessels and disturbance of harbour seals (*Phoca vitulina*). *Can. J. Zool.* 85: 290–294.

Raposa, KB and Dapp, RM. 2009. A protocol for long-term monitoring of harbor seals (*Phoca vitulina concolor*) in Narragansett Bay, Rhode Island.

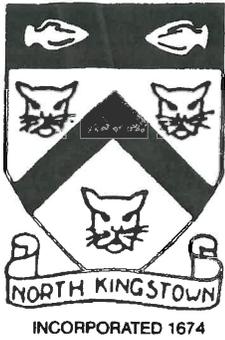
NOAA Fisheries. 2016. Feeding or Harassing Marine Mammals in the Wild is Illegal and Harmful to the Animals. <http://www.nmfs.noaa.gov/pr/dontfeedorharass.htm>

Save the Bay. 2017. Narragansett Bay Seal Monitoring. 1:1.

Suryan RM and Harvey JT. 1999. Variability in reactions of Pacific harbour seals, *Phoca vitulina richardsi*, to disturbance. *Fish. Bull.* 97: 332–339.

Wilson S, O'Malley D, Cassidy D and Clarke D. 2011. Surveying the seals of Carlingford Lough –a preliminary study 2008–11. Report to the Loughs Agency (N.Ireland), December 2011.

Wilson, S. 2013. The impact of human disturbance at seal haul-outs: A literature review for the Seal Conservation Society. Tara Seal Research report.  
<http://www.pinnipeds.org/attachments/article/199/Disturbance%20for%20SCS%20-%20text.pdf>



TOWN OF  
**NORTH KINGSTOWN, RHODE ISLAND**

100 FAIRWAY DRIVE  
NORTH KINGSTOWN, R.I. 02852-5762  
PHONE: (401) 294-3331  
FAX: (401) 583-4140

April 1, 2019

Mr. Grover J. Fugate  
Executive Director  
Coastal Resources Management Council  
Oliver Stedman Government Center  
4808 Tower Hill Road  
Wakefield, RI 02879

RE: Coastal Resources Management Council Application Number 2019-01-063

Dear Mr. Fugate:

Please find enclosed a North Kingstown Town Council vote regarding Coastal Resources Management Council Application Number 2019-01-063 to allow Therman Richard and Justin Pinheiro to construct and maintain a two-acre oyster farm using floating gear, in the west passage of Narragansett Bay. The Town Council has no substantive objection to the application as presented.

If you have any questions, you may contact me at 294-3331, extension 122.

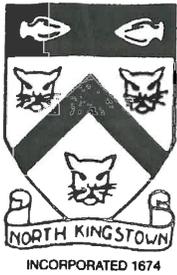
Sincerely,

Jeannette Alyward  
Town Clerk

Enclosure (1)

cc David Reis, Environmental Scientist  
William Mosunic, Administrative Assistant  
David Beutel, Aquaculture Coordinator  
Nicole LaFontaine, Director of Planning and Development





# Town of North Kingstown

Rhode Island

No. 24

## TOWN COUNCIL

Gregory A. Mancini  
*Council President*

Mary Brimer  
*Council Member*

Stacey Elliott  
*Council Member*

Kerry P. McKay  
*Council Member*

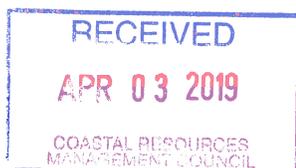
Richard A. Welch  
*Council Member*

March 25, 2019

At the Regular Meeting of the Town Council of the Town of North Kingstown held on  
March 25, 2019, it was

**VOTED:** That no substantive objection be filed to Coastal Resources Management  
Council Application Number 2019-01-063 to allow Therman Richard and Justin Pinheiro  
to construct and maintain a two-acre oyster farm using floating gear, in the west passage of  
Narragansett Bay.

Jeannette Alyward  
Town Clerk





State of Rhode Island and Providence Plantations  
Coastal Resources Management Council  
Oliver H. Stedman Government Center  
4808 Tower Hill Road, Suite 3  
Wakefield, RI 02879-1900

(401) 783-3370  
Fax (401) 783-2069

November 21, 2019

Dear Rhode Island Marine Fisheries Council (RIMFC) members:

I am sorry that I cannot attend the RIMFC meeting on December 2, 2019. I would like to share my thoughts on the Richard/Pinheiro aquaculture application CRMC #2019-01-063 that is on the agenda tonight for review. The Shellfish Advisory Panel (SAP) reviewed this application at their meeting on October 23, 2019. The SAP voted on a motion to **not** object to this application, and the motion failed with a 2-5 vote with 1 abstention. Please review the minutes for that meeting. Also, please note that the SAP did not vote to object to this application.

The SAP minutes clearly state that the discussion was about concerns that floating aquaculture gear would obstruct boating access to that area. The minutes also state that the RI Shellfishermen's Association (RISA) does not have concerns with aquaculture in this location. Please note that the discussion of boating access to the area is irrelevant to the RIMFC statutory responsibility as defined in RIGL Title 20 Section § 20-10-5(d), (attached and highlighted). Other irrelevant discussion on this application included the density of aquaculture leases in the Rome Point vicinity. RISA worked with the CRMC Aquaculture Working Group to designate this as an area that would be good for aquaculture sites because of the negligible effect on marine fisheries. The CRMC site assessment demonstrated that there was a low density of shellfish naturally occurring at the site.

RIMFC member and SAP chair Katie Eagan and I have discussed the challenges of this particular SAP vote and process. Clearly the SAP did not fulfill the statutory responsibility for the council. I encourage the council to review this application under their statutory responsibility and suspect that it will be difficult to determine any significant negative effect on the exploitation of marine fisheries. Thank you for reviewing my comments.

Sincerely,

David Beutel, Aquaculture Coordinator  
Coastal Resources Management Council

/lat

# TITLE 20

## Fish and Wildlife

### CHAPTER 20-10

#### Aquaculture

#### SECTION 20-10-5

##### **§ 20-10-5. Procedures for approval.**

(a) Upon submission of a completed application to the CRMC, the CRMC shall notify the director, the MFC and any other parties that the CRMC may by regulation designate.

(b) No application shall be approved by the CRMC or a permit granted prior to the consideration of recommendations by both the director and the MFC.

(c) The director shall review the application to determine whether the aquaculture activities proposed in the application are:

(1) Not likely to cause an adverse effect on the marine life adjacent to the area to be subject to the permit and the waters of the state;

(2) Not likely to have an adverse effect on the continued vitality of indigenous fisheries of the state.

(d) The MFC shall review the application to determine whether the aquaculture activities proposed in the application are consistent with competing uses engaged in the exploitation of the marine fisheries.

(e) The approval by the CRMC shall be subject to any public hearings, consistent with chapter 35 of title 42, that it may require.

History of Section.

(P.L. 1980, ch. 219, § 2.)

**§ 20-2.1-9. Powers and duties of the director.**

(5) The director shall, annually, with the advice of the marine fisheries council, develop and update conservation and management plans for the fishery resources of the state, which conservation and management plans shall be developed and updated prior to, and at the same time as, adoption of any license restrictions on effort or catch. Such plans shall address stock status, performance of fisheries and quotas, and management and licensing programs, and offer any recommendations for new or alternative approaches to management and/or licensing identified by the department or the marine fisheries council. In the development of the fishery conservation and management plans, priority shall be given to those resources with the highest value to the state, either for commercial or recreational purposes.

RHODE ISLAND  
DEPARTMENT OF ENVIRONMENTAL MANAGEMENT

DIVISION OF MARINE FISHERIES



# **2020 Sector Management Plan**

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## INTRODUCTION

During the 2002 legislative session, the Rhode Island General Assembly adopted the Commercial Fisheries Management Act, establishing a new commercial fishing license system and ending the moratorium on the issuance of new commercial fishing licenses that had been in place since 1995. One purpose of the act was to allow for new entrants into commercial fisheries, while still restricting access to those fisheries where warranted to rebuild depleted marine fishery resources.

To meet the purposes of the act, regulations developed included fishery “endorsements” to restrict access to, or to otherwise manage commercial harvest for a particular marine species, group of species, or by gear type. As implied by name, access to a species or fishery that is included in the *restricted* endorsement category is *limited*; while species or fisheries included in a *non-restricted* endorsement category is *open*. Two commercial license types (i.e., Commercial Fishing License, Principal Effort License) requires the license holder to hold at least one fishery endorsement. The following fishery endorsements are currently included in regulation and addressed in this plan:

- *Restricted Finfish*
- *Non-Restricted Finfish*
- *Bay quahog*
- *Soft-shell clam*
- *Whelk*
- *Shellfish Other*
- *Lobster*
- *Non-lobster Crustacean*

Finfish species for which access is limited in the marine waters of Rhode Island and are therefore included in the *Restricted Finfish Endorsement* include striped bass, scup (during the summer sub-period only), summer flounder, black sea bass, and tautog. All other regulated species of finfish common in RI waters (e.g., winter flounder, monkfish) are included in the *Non-Restricted Finfish Endorsement*, which is available to any resident or non-resident license holder.

Shellfish species for which access is limited include bay quahog, soft-shell clam, and whelk, and are included in the *Bay Quahog, Soft-Shell Clam, and Whelk endorsements* respectively. All other regulated species of shellfish (e.g., blue mussel, oyster) are included in the *Shellfish Other Endorsement*, which is available to any Rhode Island resident license holder.

Species of crustaceans for which access is limited include lobster, which is included in the *Lobster Endorsement*. All other regulated species of crustaceans (e.g., Blue crab, Jonah crab) are included in the *Non-Lobster Crustacean Endorsement* which is available to any Rhode Island resident license holder.

The availability of any new restricted endorsements is determined annually as a ratio of licenses not renewed. These *exit:entry ratios* are a principal mechanism in the Rhode Island commercial licensing system used to manage harvest through license access restrictions. Exit:entry ratios are reviewed annually by the Industry Advisory Committee (IAC) and Rhode Island Marine Fisheries Council (RIMFC) (the Council) and presented for public comment at a public hearing in accordance with the requirements of the Administrative Procedures Act (R.I. Gen. Law §42-35). Determining the level of fishing effort, the impacts to the resource that a particular license type collectively represents, and thus determining the number of licenses desired in a given fishery as a means to limit such effort, is a primary goal of the licensing program.

Pursuant to R.I. Gen. Law §20-2.1-9(5), this management plan is prepared to address the state of the fishery resources of the state, with focus on those fishery resources with the greatest value to the state and is updated annually prior to any proposed changes to commercial license restrictions on effort and catch. Any amendments made to the commercial licensing regulations must be consistent with this management plan.

The primary goal for quota-managed fisheries is to maintain open seasons with economically viable possession limits while minimizing regulatory discards, avoiding harvest overages, maximizing harvest opportunities, and ensuring equitable access to the fishery. However, due to the multi-species nature of the commercial fishing industry, increased effort can result in shorter seasons and higher discards for many species. Information contained in this plan seeks to aid in understanding if management goals are being realized under existing management and to provide guidance as to the degree of potential new effort that could be sustained in RI's most important fisheries.

This plan includes up-to-date information on stock status, management programs, and fishery performance of commercially important species in the state and provides licensing recommendations based on these parameters for the following year. The plan is provided to the IAC in draft form in August, followed by a public hearing in September, and a RIMFC meeting in October. At their annual meeting in October, the Council offers final recommendations on all restricted endorsements and matters brought to the hearing in September.

# RESTRICTED FINFISH

## BLACK SEA BASS



### STOCK STATUS

The [2016 benchmark stock assessment](#) found black sea bass is not overfished nor experiencing overfishing. With improved recruitment and declining Fishing mortality (F) rates since 2007, Spawning Stock Biomass (SSB) has steadily increased. SSB in 2015 was estimated at 48.9 million pounds, 2.3 times the SSB target of 21.3 million pounds, and F was estimated at 0.27,

below the  $F_{target}$  of 0.36. Recruitment at age 1 averaged 24.3 million fish from 1989 to 2015, with peaks in 2000 (1999 cohort) at 37.3 million and at 68.9 million in 2012 (2011 cohort). The distribution of black sea bass continues to expand northward into the Gulf of Maine (GOM). Quotas since 2015 have been set based on projections from this benchmark assessment (NEFSC, 2017a). An operational assessment is expected to be completed in 2019. This new assessment will include the newly calibrated Marine Recreational Information Program (MRIP) time series and could have significant impacts to the assessment.

### MANAGEMENT PROGRAM

Black sea bass is managed jointly by the Atlantic States Marine Fisheries Commission (ASMFC) and the Mid-Atlantic Fishery Management Council (MAFMC) through the Summer Flounder, Scup and [Black Sea Bass Fishery Management Plan \(FMP\)](#) and its' subsequent amendments and addenda. The FMP establishes coast-wide quotas for each state annually; with Rhode Island's share of the quota currently at 11%. Minimum size, seasons, and possession limits are then established by each state annually, with review by the ASMFC/MAFMC to assure compliance with the FMP. The specifications for 2019 are presented in the table below. These recommendations are consistent with the advice of the RIMFC. A Multi-Purpose License or *Restricted Finfish Endorsement* is required to harvest black sea bass in RI waters.

### 2019 RI COMMERCIAL REGULATIONS

Min. Size	Season	2019 Allocation (%)	Possession Limit (lbs/vsl)
11"	1/1 – 4/30	25%	500/week
	5/1 – 6/30	25%	50/day
	7/1 – 7/31	19.5%	50/day
	8/1 – 9/14	CLOSED	
	9/15 – 10/31	19.5%	50/day
	11/1 – 12/ 31	11%	50/day

Currently, only the first sub-period January 1 – April 30 is managed by aggregate, or weekly, possession limits; all other sub-periods are managed by a daily possession limit. As a means to reduce regulatory discards and provide greater flexibility to fishing practices, the Division is currently working to determine if aggregate possession limits are feasible for other sub-periods through an aggregate landings pilot program.

### FISHERY PERFORMANCE

In 2018, 507 commercial fishers (Table 2) landed 375,853 pounds of black sea bass in RI valued at \$1,440,258 (Table 1). In 2019, the possession limit in the first sub-period was increased twice, on March 3 from 500 to 750 lbs/week, and then on March 24 to 850 lbs/week. The second sub-period closed on June 11, 19 days before the end of the sub-period. The sub-period beginning on July 1 closed on July 17, 14 days before the end of the sub period (Table 3).

### DMF RECOMMENDATIONS FOR 2020

NOAA fisheries has proposed interim specifications for the 2020 fishing year that will be replaced in early 2020 following the results of a black sea bass operational assessment. The coastwide quota for 2020 is anticipated to be 3.52 million lbs, a slight increase from the 2019 coastwide quota of 3.14 million pounds. The current management program is performing reasonably well given the low quota and high availability of this species in our area, with closures minimized to the greatest extent practicable given the current quota and level of effort. Based on the interim 2020 quota and performance to date in 2019, the Division recommends maintaining the level of effort at or below current levels; and maintain as a restricted category species. An important note for 2020 is that there has been a significant recalibration in an important data stream (recreational catch data), and the operational assessment could have major repercussions to the commercial quota, therefore there is high uncertainty in this recommendation for 2020.

## SCUP



### STOCK STATUS

The [2017 stock assessment update](#) found scup is not overfished nor experiencing overfishing. With improved recruitment and declining F rates since 2000, SSB has steadily increased. SSB in 2016 was estimated at 396 million pounds, higher than the SSB<sub>target</sub> of 192 million pounds, and F was estimated at 0.139, below the F<sub>target</sub> of 0.22. Recruitment at age 0 averaged 121 million fish from 1984 to 2016,

with peaks in 1999 at 222 million, 2006 at 222 million, and at 218 million in 2007. The 2015 year class estimate was large at 252 million fish while the 2016 estimate was below average at 65 million fish (NEFSC, 2017c).

### MANAGEMENT PROGRAM

Scup is managed jointly by the ASMFC and MAFMC through the [Summer Flounder, Scup and Black Sea Bass FMP](#) and its subsequent amendments and addenda. The FMP establishes coast-wide quotas for each state annually, with RI's share currently at 56.19%.

During the two federal sub-periods, the quota is available coast-wide and is managed through daily possession limits. Scup is classified as a non-restricted species in RI during these two federal sub-periods. In the summer however, scup is classified as a restricted species for the purpose of managing catch rates when landings by state waters fishermen increases. RI further manages the summer sub-period by allocating the state quota into a General Category (GC) (i.e., gear types other than floating fish traps) and Floating Fish Trap (FFT) sector, at 40% and 60% respectively, with allocations to these two sectors based on historical landings. Another key aspect of the management program includes DEM's authority to transfer quota between the FFT and GC sectors, which provides for the full harvest of the RI quota each year. A Multi-Purpose License or *Restricted Finfish Endorsement* (summer only, *Non-Restricted Finfish Endorsement* in winter) is required to harvest scup in RI waters.

### 2019 RI COMMERCIAL GENERAL CATEGORY REGULATIONS

Min. size	Season	2019 Allocation	Starting Poss. limit
9"	Winter I (federal): (1/1 – 4/30)	Coastwide	50,000 lbs/vsl/day
	Summer: (5/1 – 9/30)	40% of sub-period quota	10,000 lbs/vsl/week
	Winter II (federal): (10/1 – 12/31)	Coastwide	2,000/18,000 lbs/vsl/day*

\* Winter II possession limit begins at 2,000 lbs/vsl/day; change to 18,000/day if Winter I roll over available

### 2019 RI COMMERCIAL FLOATING FISH TRAP REGULATIONS

Min. size	Season	2019 Allocation	Starting Poss. limit
9"	Winter I (federal): (1/1 – 4/30)	Coastwide	50,000 lbs/vsl/day
	Summer: (5/1 – 9/30)	60% of sub-period quota	Unlimited
	Winter II (federal): (10/1 – 12/31)	Coastwide	2,000/18,000 lbs/vsl/day*

\* Winter II possession limit begins at 2,000 lbs/vsl/day; change to 18,000/day if Winter I roll over available

### FISHERY PERFORMANCE

In 2018, 433 commercial fishers (Table 2) landed 4,712,575 pounds of scup in RI valued at \$2,738,740 (Table 1). To date, no early closures have been needed. Two increases to the possession limit have been enacted in 2019 (July 21 to 15,000 lbs/week and August 4 to 20,000 lbs/week) (Table 3).

### DMF RECOMMENDATIONS FOR 2020

NOAA fisheries has proposed interim specifications for the 2020 fishing year that will be replaced in early 2020 following the results of a scup operational assessment. The coastwide quota for 2020 is anticipated to be 23.98 million pounds, the same as 2019. Given the anticipated quota, good stock status, and performance to date in 2019, the Division recommends allowing for small increases in effort during the summer sub-period. Additionally, the Division recommends maintaining scup in the restricted category in the summer sub-period and in the non-restricted category only during the federal sub-periods at this time. An important note for 2020 is that there has been a significant recalibration in an important data stream (recreational catch data), and the operational assessment could have repercussions to the commercial quota, therefore there is high uncertainty in this recommendation for 2020.

## STRIPED BASS



### STOCK STATUS

A [benchmark stock assessment](#) for striped bass was completed and peer reviewed in November 2018 and subsequently adopted for management use by the ASMFC management board in May

2019. The assessment findings indicate that the striped bass stock is overfished and experiencing overfishing relative to the updated Biological Reference Points (BRPs). SSB in 2017 was estimated to be 151 million pounds, below both the  $SSB_{target}$  and  $SSB_{threshold}$ , 252 million pounds and 202 million pounds respectively. SSB has been declining since 2003 and has been below the threshold since 2010.  $F$  in 2017 was estimated to be 0.31, above both  $F_{target}$  and  $F_{threshold}$ , 0.20 and 0.24 respectively.  $F$  has been at or above the threshold in 13 of the last 15 years (NEFSC, 2019).

### MANAGEMENT PROGRAM

Striped bass is managed by ASMFC through [Amendment 6](#) to the Interstate FMP for striped bass and its subsequent addenda I-IV, with [Addendum IV](#) being the most recent management document implemented in 2015. The recreational fishery is managed through minimum size and bag limits while the commercial fishery is managed with size limits and state-specific quota allocations. States can implement alternative management measures that are deemed to be equivalent to the preferred measures in the FMP through a Conservation Equivalency (CE) process. In RI, the recreational fishery has a 1 fish bag limit and a 28" minimum size. The commercial fishery is split between the GC and FFT sectors. The GC has a 5 fish possession limit, a 34" minimum size, and gets 61% of the RI allocation. The GC quota is divided between two sub-periods, designed to allocate harvest between inshore bay and offshore Block Island fishing. Days closed to fishing include Friday and Saturday as a means to extend the season as long as possible. The FFT sector operates under an ASMFC approved CE proposal that allows them to have a lower minimum size limit of 26" in exchange for a reduced quota. The FFT fishery opens annually on April 1 at an unlimited possession limit and continues until 70% of the sectors allocation is projected to be harvested. At the time a reduced possession limit of 500 pounds/fish trap licensee/day goes into effect until the FFT allocation is exhausted. If it is projected that the FFT sector will not be able to fully harvest their allocation, the Division may transfer a portion to the GC fishery. A Multi-Purpose License or *Restricted Finfish Endorsement* is required to harvest Striped bass in RI waters and the harvest of striped bass in federal waters (EEZ) is prohibited.

### 2019 RI COMMERCIAL GENERAL CATEGORY REGULATIONS

Min. Size	Season	2019 Allocation		Possession Limit
34"	5/20 – 6/30	61%	70%	5 fish/vessel/day
	7/1 – 12/31		30%	

### 2019 RI COMMERCIAL FLOATING FISH TRAP REGULATIONS

Min. Size	Season	2019 Allocation	Possession Limit
26"	4/1 – 12/31	39%	Unlimited until 70% of quota reached, then 500 lbs/licensee/day

### FISHERY PERFORMANCE

In 2018, 267 commercial fishers (Table 2) landed 176,639 pounds of striped bass in RI valued at \$782,131 (Table 1). In 2019, the first sub-period of the GC sector did not experience an early closure and closed at the end of the sub-period, with an underage of 3,685 lbs (Table 3). The second sub-period began immediately on July 1 and closed prior to the end of the sub-period on July 11 with an overage of 9,535 lbs. As of the writing of this report, 57,263 lbs remain in the FFT quota.

### DMF RECOMMENDATIONS FOR 2020

As a result of the findings of the 2018 striped bass benchmark stock assessments overfishing and overfished status, ASMFC is currently considering management changes for both the recreational and commercial fisheries in 2020 through Draft Addendum VI to Amendment 6 to the Interstate FMP for striped bass. The current timeline has the management board voting on final action on Addendum VI in October 2019. In the absence of information as to what management changes will occur in 2020, if any, the Division recommends maintaining effort at or below current levels and maintaining striped bass as a restricted category species.

## SUMMER FLOUNDER



### STOCK STATUS

The [2018 benchmark stock assessment](#) found summer flounder is not overfished or experiencing overfishing. With improved recruitment and declining fishing mortality rates since the late 1980s, SSB steadily increased, peaking in the early 2000s. SSB in 2017 was estimated at 98 million pounds, higher than the SSB<sub>threshold</sub> of 63 million pounds, and F was estimated at 0.334, lower than the F<sub>threshold</sub> of 0.448. Recruitment at age 0 was estimated to be below the

time series average of 53 million fish, at 42 million fish in 2017 (NEFSC, 2019).

### MANAGEMENT PROGRAM

Summer flounder is managed jointly by the ASMFC and MAFMC via the [Summer Flounder, Scup and Black Sea Bass FMP](#) and its subsequent amendments and addenda. In RI, seasons are divided into three seasonal sub-periods. While previously the fishery had been closed for three days each week in the summer sub-period, following a quota increase in 2019 due to the findings of the benchmark stock assessment, these closed days were deemed no longer necessary and the fishery was restored to 7 days per week. Aggregate possession limits are currently only available to permit holders during the first sub-period. A Multi-Purpose License or *Restricted Finfish Endorsement* is required by license holders to harvest summer flounder in RI waters.

### 2019 RI COMMERCIAL REGULATIONS

Min. size	Season	2019 Allocation	Starting Poss. Limit (lbs/vsl/day)
14"	1/1 – 4/30 (Winter)	54%	100/1,500 Aggregate (bi-week)
	5/1 – 9/15 (Summer)	35%	50
	9/16 – 12/31 (Fall)	11%	100

### FISHERY PERFORMANCE

In 2018, 492 commercial fishers (Table 2) landed 1,022,618 pounds of summer flounder in RI valued at \$4,706,067 (Table 1). In 2019, no early closures or daily possession limit changes were implemented during the first sub-period. The aggregate possession limit was increased once on March 31 to 4,000 lbs/bi-week. The possession limit in the summer sub-period was increased to 75 lbs/day on June 9 and raised again to 100 lbs/day on June 30. There have been no fishery closures to date in 2019 (Table 3).

### DMF RECOMMENDATIONS FOR 2020

The coastwide quota for 2020 is estimated to be 11.53 million lbs, the same as 2019. Due to the current quota and current level of effort, the Division recommends maintaining effort at or below current levels and maintain as a restricted category species.

## TAUTOG



### STOCK STATUS

The [2016 stock assessment update](#), analyzes the stock in 4 regions (Massachusetts/Rhode Island - MARI, Long Island Sound, New Jersey/New York Bight, and Delaware/Maryland/Virginia); the updated assessment finds that the MARI region is not overfished and overfishing is not occurring. SSB has been

fairly steady over the past several years, and is estimated at 2,196 mt, above the threshold of 2,004 mt. F is estimated at 0.23, below the target of 0.28 (ASMFC, 2016).

### MANAGEMENT PROGRAM

Tautog is managed regionally by the ASMFC through [Amendment 1](#) to the Interstate [FMP](#) for Tautog. Although not specifically required by the FMP, RI has an established commercial quota, which in part achieves the F targets required by the FMP. The commercial quota has remained stable for the past several years at 51,348 pounds. Traditionally, the quota was split between 3 seasons (spring, summer and fall), however, for 2019 the summer sub-period has been removed. A Multi-Purpose License or *Restricted Finfish Endorsement* is required by license holders to harvest Tautog in RI waters.

### 2019 RI COMMERCIAL REGULATIONS

Min. Size	Season	2019 Allocation	Possession Limit
16"	1/1 – 3/31		Closed
	4/1 – 5/31	50%	10 fish/day
	6/1 – 10/14		Closed
	10/15 – 12/31	50%	10 fish/day

### FISHERY PERFORMANCE

In 2018, 242 commercial fishers (Table 2) landed 51,414 pounds of tautog in RI valued at \$196,178 (Table 1). The fishery experienced an early seasonal closure in the first sub-period in 2019 and closed early on May 24 (Table 3).

### DMF RECOMMENDATIONS FOR 2020

The quota for 2020 is anticipated to be 51,348 pounds, minus any overages that may occur in 2019. Due to uncertainty in stock status pending a stock assessment update with the newly calibrated MRIP data and difficulty with maintaining open seasons, the Division recommends maintaining effort at or below current levels and maintain as a restricted category species.

## 2020 LICENSING RECOMMENDATIONS - *RESTRICTED FINFISH ENDORSEMENT*

### DMF

Referring to Table 4, the number of licenses eligible to harvest restricted finfish has remained relatively stable in the last three years, which indicates that this ratio is maintaining a consistent number of licenses and participants in the fishery. More importantly however is that the new licenses that replaced the licenses not renewed has not led to an appreciable increase in effort, evidenced by the number of participants landing restricted species. Each of the restricted species had fewer participants in 2018 than 2017 and none have fluctuated more than 5% since 2014. (Table 2). **The Division therefore recommends that the 1:1 exit:entry ratio be maintained, and that the species currently included in the Restricted Finfish category also be maintained.**

In 2019, 13 licenses eligible to harvest restricted finfish were not renewed (8 MPURP, 5 PEL w/RFIN), which would *result in 15 new PEL restricted finfish endorsements being issued in 2020.*

### RIMFC

At their meeting on October 15, 2019, the Council did not offer any recommendations to alter the exit:entry ratio for the Restricted Finfish Endorsement.

## NON-RESTRICTED FINFISH

### ATLANTIC HERRING



#### STOCK STATUS

The [2018 Atlantic herring benchmark stock assessment](#), peer reviewed at the 65<sup>th</sup> [Northeast Regional Stock Assessment Review Committee \(SARC\)](#), indicates Atlantic herring are not overfished and overfishing is not occurring; however, recent estimates of herring recruitment have been below average, leading to in-season ACL

adjustments in 2018 and 2019. SSB in 2017 was estimated at 141,473 mt, below the SSB<sub>target</sub> (SSB<sub>MSY proxy</sub>) of 189,000 mt (416 million pounds) and above the SSB<sub>threshold</sub> (1/2 SSB<sub>MSY proxy</sub>) of 94,500 mt (208 million pounds). In 2017, F was estimated at 0.16, below the F<sub>threshold</sub> of 0.51 (NEFSC, 2018).

#### MANAGEMENT PROGRAM

Atlantic herring is managed jointly by the ASMFC, NOAA Fisheries and NEFMC. At ASMFC, Atlantic herring are managed through [Amendment 3 to the Interstate FMP for Atlantic Herring](#) and subsequent addenda I and II. Annual specifications are calculated and regional ACLs (quotas) are broken out into fishing areas. Area 2 encompasses Southern New England (SNE) waters including RI state waters. The 2019 Atlantic herring quota for Area 2 was set to 4,188 metric tons. River herring bycatch is a concern within the Atlantic herring fishery and also has regional ACLs (catch caps) that are set by fishing area and gear type. When the catch cap for river herring is reached in any given area, the Atlantic herring fishery is closed until the next fishing year. The 2019 Area 2 river herring catch cap was set at 251.9 mt. A Multi-Purpose License or *Non-Restricted Finfish Endorsement* is required to harvest Atlantic herring in RI waters.

In RI, any vessel is eligible to participate in the state waters Atlantic herring fishery, however a permit is required to possess greater than 2,000 pounds. This permit has been required since 2013 as a means to address issues arising from prohibited species interactions, mainly river herring, and gear conflicts. Fisheries violations may result in a vessel's state water Atlantic herring permit being revoked.

#### FISHERY PERFORMANCE

In 2018, 27 commercial fishers (Table 2) landed 2,159,432 pounds of Atlantic herring in RI valued at \$571,543 (Table 1). A state quota has not been established.

#### DMF RECOMMENDATIONS FOR 2020

It is recommended that the current permitting program be reviewed for effectiveness and continue to match federal landing limits in state waters. Maintain as a non-restricted category species.

## BLUEFISH



### STOCK STATUS

The most recent [ASMFC Benchmark Stock Assessment](#) was conducted by the Northeast Regional Stock Assessment Workshop (SAW) in August 2015. The assessment indicates lower biomass estimates and reference points relative to the previous assessment, though the species is not currently experiencing overfishing, nor is it overfished. SSB

in 2014 was estimated to be 191 million pounds, which is less than the  $SSB_{target}$  (223 million pounds) but greater than the  $SSB_{threshold}$  (112 million pounds).  $F$  in 2014 was estimated to be 0.157, below the  $F_{threshold}$  ( $F_{msy}$  proxy =  $F_{35\%SPR}$  = 0.19).

### MANAGEMENT PROGRAM

Bluefish is managed jointly by the ASMFC and MAFMC through the [FMP for Bluefish](#) and its subsequent amendment and addendum, which sets annual commercial coast-wide quotas for each state; Rhode Island receives 6.8%. Weekly aggregate possession limits in RI allow for fishermen to maximize harvest when they encounter bluefish in large numbers, while allowing for up-to-date quota tracking. In 2018, the first sub-period possession limit was changed from a 500/week aggregate to a 1000/bi-week aggregate, this approach was maintained in 2019. A Multi-Purpose License or *Non-Restricted Finfish Endorsement* is required to harvest Bluefish in RI waters.

### 2019 RI COMMERCIAL REGULATIONS

Min. Size	Season	Possession Limit (lbs/vsl)
12"	1/1 – 4/30	1000/bi-week
	5/1 – 11/9	8000/week
	11/10 – 12/31	500/week

### FISHERY PERFORMANCE

In 2018, 278 commercial fishers (Table 2) landed 237,121 pounds of bluefish in RI valued at \$245,049 (Table 1). In 2019, the first sub-period remained open for its entirety with no possession limit decreases imposed, with a harvest underage of 11,468 pounds, which carried over into the second sub-period. The possession limit in the second sub-period was increased to 12,000/week on June 30 (Table 3) and has ~400,818 pounds remaining as of the writing of this report.

### DMF RECOMMENDATIONS FOR 2020

The initial 2020 RI allocation is estimated to be 528,280 lbs., though NOAA may increase the quota in early 2020 in the event of a recreational to commercial sector transfer. This quota is subject to change depending on the performance of the recreational fishery in 2019, the results of the 2019 operational assessment, and any potential transfers that may occur from the recreational sector to the commercial

sector. Given a similar quota and current level of effort, the Division recommends maintaining effort in 2020 at current levels and maintaining bluefish as a non-restricted category species.

However, RI has required frequent commercial transfers from Atlantic states in past years. RI has received transfers ranging from 100,000 lbs. to 180,000 lbs. between 2014 and 2017, averaging an annual +55,949-lb transfer during that time. The Division will continue to monitor the situation and may consider adding bluefish to the restricted category in the future if transfers continue to occur frequently.

## COD



### STOCK STATUS

RI State waters are considered part of the George’s Bank (GB) cod stock. An updated [operational assessment](#) for the GB Atlantic Cod stock was completed in 2017. This was a data-limited assessment using the PlanBsmooth approach that updated commercial fishery catch data through 2016 and updated research

survey indices of abundance. Based on this assessment, stock status cannot be quantitatively determined due to a lack of biological reference points, however it is qualitatively assessed as overfished. Overfishing status is unknown. Projections cannot be computed using the PlanBsmooth assessment approach, but instead this approach applies an estimate of recent change in the smoothed survey biomass (rate of change is estimated to be 1.517 in 2017) to the average of the recent three years of catch to produce catch advice (thus influenced by uncertainty in survey estimates). The smoothed survey biomass is increasing, but without a biomass reference point it is not known if rebuilding is on schedule (NEFSC, 2017b).

### MANAGEMENT PROGRAM

Atlantic cod is managed on a federal fishing year (May 1 - April 30) under the NEFMC [Northeast Multispecies FMP](#). Due to the 35-day partial Federal government shutdown, there was a delay in the rulemaking process for Framework Adjustment 58 of the Northeast Multispecies Groundfish FMP. Beginning May 1<sup>st</sup>, 2019, the annual catch limit was set at 3,348,822 pounds under Framework 57, the same as for FY 2018. Framework 58 was passed and changes to the quota for seven species (including Atlantic Cod) were effective beginning July 18, 2019. The 2019 Annual Catch Limit (ACL) for the GB stock under this new framework is 3,838,248, up 14.6% from the 2018 ACL. In addition, the minimum size was lowered to 19” for the commercial fishery and 21” for the recreational and party/charter fisheries. In an effort to complement federal FMPs, RI has adopted a minimum size limit and daily possession limit consistent with federal regulations, and state quota set at 1% of the GB ACL (equal to 38,382 pounds for 2019). A Multi-Purpose License or *Non-Restricted Finfish Endorsement* is required to harvest Atlantic cod in RI waters.

### 2019 RI COMMERCIAL REGULATIONS

Min. Size	Season	Possession Limit (lbs/vsl/day)
19”	5/1 – 4/30	1,000

### FISHERY PERFORMANCE

In 2018, 87 commercial fishers (Table 2) landed 65,696 pounds of Atlantic cod in RI valued at \$151,667 (Table 1). These landings include fish caught in state waters, as well as fish caught in federal waters. State-water landings for RI during FY2018 totaled approximately 3,144 pounds, or 9.4% of the RI state-water quota (33,488.22 lbs). The state quota for cod has not been harvested since its inception in 2009.

Cod abundance in state waters is ephemeral and potential landings for a given year cannot be accurately projected. This fishery still appears to be resource limited and given the increase in the ACL for 2019, it is unlikely that the RI state quota will be fully harvested.

#### DMF RECOMMENDATIONS FOR 2020

The 2020 ACL for GB Atlantic Cod is 2,182 mt (4,810,487 pounds). RI's 2020 state quota is set at 1% of the ACL, equal to 48,105 lbs. It is recommended that effort be maintained at current levels and this species be maintained in the non-restricted category.

## MENHADEN



### STOCK STATUS

A [2017 Atlantic menhaden stock assessment update](#) indicates the stock is neither overfished nor experiencing overfishing. The current BRPs use F and Fecundity (FEC, number of mature ova) to determine stock status. F has been variable over time series ranging between 0.31 and 0.58 with F in 2016 estimated to be 0.51. Fecundity in 2016 was estimated to be 83,486 billion eggs, above the threshold of 57,295 billion eggs but below the target of 99,467 billion eggs (ASMFC, 2017a). Work is currently underway on two benchmark stock assessments for Atlantic menhaden, a single

species assessment and a series of assessment models that could be used for ecological reference points. Both assessment processes will be peer reviewed in November 2019 and are scheduled to go to the Atlantic menhaden management board in February 2020.

### MANAGEMENT PROGRAM

Atlantic menhaden are managed by the ASMFC under [Amendment 3](#) to the Interstate [FMP](#) for Atlantic Menhaden which maintains the management program's current single-species BRPs until the review and adoption of menhaden-specific ecological reference points as part of the 2019 benchmark stock assessment process. It also addresses multiple commercial management measures, including allocation, quota transfers, quota rollovers, incidental catch, and the Episodic Events (EE) Set Aside Program. The ASMFC's Atlantic Menhaden Management Board sets an annual Total Allowable Catch (TAC) for menhaden that is allocated to the Atlantic coast jurisdictions, with each jurisdiction getting a 0.5% minimum quota allocation, with the remainder of the TAC being distributed to the states based on landings history occurring from 2009-2011. A TAC set-aside of 1% is used each year by states in the New England region (New York to Maine) for EE, or periods of time when large amounts of biomass are present (ASMFC, 2017b). RI has participated in the EE Set-Aside Program, which has allowed RI state waters to re-open to the landing of menhaden until the set-aside quota was harvested or the program ended. The RI menhaden allocation is 0.52% of the overall TAC. Upon harvest of the RI quota, the landing of menhaden in RI is prohibited, except for non-directed fisheries which have a bycatch allowance of 6,000 pounds/vessel/day, or 12,000 pounds/vessel/day if two licensed fishermen are on board the vessel. A Multi-Purpose License or *Non-Restricted Finfish Endorsement* is required to harvest Menhaden in RI waters.

In Rhode Island, Narragansett Bay in its entirety is designated a Menhaden Management Area through RI statute, which provides the Division with the ability to manage menhaden through additional [management measures](#) including:

- Areas permanently closed to purse seining (i.e., Providence River, Greenwich Bay);
- A daily possession limit of 120,000 pounds/vessel;
- Net size certification;
- Vessel capacity restrictions;
- Call-in requirements;
- A threshold amount of 2,000,000 lbs of fish that must be present in the management area before opening the commercial bait fishery;

- An overall cap on the amount of fish that can be harvested (i.e., 50% of the standing stock in the Bay over the threshold amount);
- A threshold amount of fish that must be present for the commercial bait fishery to remain open (i.e., 1.5 million pounds);
- A Fall opening of the fishery (subject to quota or EE availability) in the southern portion of the management area, regardless of biomass levels, with a daily possession limit of 25,000 lbs/vessel.

Biomass levels in the Management Area are monitored on a weekly or bi-weekly basis through a contracted spotter pilot who provides school counts and an estimate of biomass in pounds of fish. A depletion model for open systems (Gibson 2007) uses these spotter pilot estimates, commercial bait landings, and biological information to provide an overall estimate of biomass present, which is then used to open and close the commercial bait fishery in the management area.

### FISHERY PERFORMANCE

In 2018, 7 commercial fishers (Table 2) landed 722,388 pounds of Atlantic menhaden in RI valued at \$54,990 (Table 1). As of the writing of this report, 50,431 pounds have been landed, with 2,390,949 pounds remaining in the quota. There have been no menhaden management area openings in 2019 to date as the biomass level has not reached the threshold amount to allow fishing to commence.

### DMF RECOMMENDATIONS FOR 2020

The TAC for Atlantic menhaden for 2020 has been set by the ASMFC management board at status quo. RI's initial commercial menhaden quota for 2020 is 2,440,542 lbs, minus any overages that occur; therefore, the Division recommends maintaining effort at or below current levels in 2020 and maintaining menhaden as a non-restricted species.

# MONKFISH



## STOCK STATUS

The [2016 monkfish operational assessment](#) did not include an update to the population model (SCALE) used in previous assessments, because of uncertainty about the ageing methodology used to estimate monkfish growth. As a result, components of the biological reference points, such as  $F_{threshold}$ , could not be updated resulting in no updates to the Over Fishing Limit (OFL). The 2016 operational assessment did not vacate the 2013 operational assessment, which showed that  $F$  was estimated to be 0.11, the updated  $F_{threshold}$  was 0.37, and the corrected total

Biomass ( $B$ ) estimate of 88,806 mt was above both the  $B_{target}$  of 71,667 mt (BMSY proxy) and the 2013 corrected  $B_{threshold}$  of 23,204mt ( $1/2 * B_{target}$ ). The 2013 BRPs indicated monkfish are not overfished and overfishing is not occurring in the Southern Fishery Management Area; however, high levels of uncertainty in the BRPs likely contribute to underestimates of  $F$  and overestimates  $B$  in each area (NEFSC, 2016). A new operational assessment is expected to be completed in 2019.

## MANAGEMENT PROGRAM

Monkfish is jointly managed by the NEFMC and MAFMC through the [Monkfish FMP](#) on a federal fishing year (May 1 - April 30), with the NEFMC having the administrative lead. Monkfish is managed as two stocks, with RI waters considered part of the Southern Management Area (SMA) stock. The SMA monkfish stock is regulated by the NEFMC through minimum size limits, gear restrictions, and Days at Sea (DAS) restrictions. A Multi-Purpose License or *Non-Restricted Finfish Endorsement* is required to harvest monkfish in RI waters.

In an effort to complement the FMP, RI has adopted a minimum size, daily possession limit, and state quota on monkfish harvested in state waters. The RI state-water quota is set at 3% of the SMA Total Allowable Landings (TAL) with a possession limit reduction to 50 lbs/vessel/day tail weight when state-water landings reach 2% of the SMA TAL

## 2019 RI COMMERCIAL REGULATIONS:

Min. Size	Season	Possession Limit (lbs/vsl/day)
17" whole/11" tail	5/1 – 4/30	3,027 whole/700 tail

## FISHERY PERFORMANCE

In the May 1, 2017 – April 30, 2018 fishing year, 174 commercial fishers (Table 2) landed 3,057,088 pounds of monkfish in RI valued at \$2,329,546 (Table 1).

## DMF RECOMMENDATIONS FOR 2020

Allowing for a modest increase in effort would appear to still provide for the directed fishery to remain open for the entire fishing year. Maintain in the non-restricted species category.

## WINTER FLOUNDER



### STOCK STATUS

The [2017 SNE/MA operational stock assessment](#) for Winter Flounder (WFL) indicates the stock is overfished, but overfishing is not occurring. SSB in 2016 was estimated to be 4,360 mt, which is 18% of the biomass target and 36% of the biomass threshold. F in 2016 was estimated to be 0.21 which is 62% of the overfished threshold (NEFSC, 2017d).

### MANAGEMENT PROGRAM

Winter flounder are jointly managed on a federal fishing year (May 1 - April 30) by the ASMFC and NEFMC. At the NEFMC, WFL are managed through the Northeast Multispecies (Groundfish) FMP. Under [Framework Adjustment 58](#), harvest of WFL is allowed in the federal SNE/MA stock management area, and federally permitted vessels participating in a sector are allowed to fish with no limit until they reach their sector allowable catch limit. Federally permitted vessels in the “common pool” are currently restricted to a possession limit of 2,000 lb/vsl/day, or 4,000 lbs/vsl/trip limit, which is adjustable by the NMFS regional administrator. The SNE/MA management area remains open to common pool vessels until the allowable catch limit is reached.

At the state level, ASMFC manages the inshore WFL stocks through the FMP for Inshore Stocks of WFL and its subsequent [amendments and addenda](#). WFL are managed with minimum size, daily possession limits, mesh size restrictions, and areas closed to harvest. In RI, regulations include areas within state waters closed to harvest, including Point Judith Pond, the Harbor of Refuge, Potters Pond, and Narragansett Bay north of the Colregs line, which aim to protect a recovery of the population in these areas due to the SNE closure. In order to maintain a stream of commercial landings for biological data collection used in the stock assessment, RI also adopted a 50 lb daily possession limit. A Multi-Purpose License or *Non-Restricted Finfish Endorsement* is required to harvest WFL in RI waters.

### 2019 RI COMMERCIAL REGULATIONS

Min. Size	Season	Possession Limit (lbs/vsl/day)
12”	1/1 – 12/31	50

### FISHERY PERFORMANCE

In 2018, 100 commercial fishers (Table 2) landed 191,198 pounds of winter flounder in RI valued at \$574,222 (Table 1). A state quota has not existed since 2006.

### DMF RECOMMENDATIONS FOR 2020

As the fishery is determined to be overfished, with no overfishing, the Division recommends maintaining effort at or below current levels in 2020 and maintaining winter flounder as a non-restricted species. Any future changes in state waters management would need approval of the ASMFC Winter Flounder Management Board.

## SPINY DOGFISH



### STOCK STATUS

The [2018 stock assessment update](#) indicated that the spiny dogfish population is not overfished, and overfishing is not occurring. Spawning stock biomass is estimated to be 235 million pounds, a level slightly above the threshold of 175 million pounds (ASMFC, n.d.).

### MANAGEMENT PROGRAM

Spiny dogfish is jointly managed on a federal fishing year (May 1 - April 30) by the MAFMC and NEFMC through a joint FMP, with the ASMFC overseeing the species interstate FMP. Spiny dogfish are managed under a quota system. The 2018 fishing season (May 1 - April 30) quota was 38.2 million pounds, with Rhode Island's quota is part of the Northern Region (Maine through Connecticut) at 58% of the coastwide allocation. Vessels are limited by a maximum possession of 6000 pounds per vessel per day. No minimum size exists currently with the species. A Multi-Purpose License or *Non-Restricted Finfish Endorsement* is required to harvest Spiny dogfish in RI waters.

### FISHERY PERFORMANCE

In the May 1, 2017 – April 30, 2018 fishing year, 35 commercial fishers (Table 2) landed 197,732 pounds of spiny dogfish in RI valued at \$32,359 (Table 1).

### DMF RECOMMENDATIONS FOR 2020

At this time, the Division recommends status quo of the current fisheries management plan. Any changes in state waters management would need approval of the ASMFC Spiny Dogfish Management Board. Maintain in the non-restricted species category.

## SMOOTH DOGFISH

### STOCK STATUS

The [2015 benchmark stock assessment](#) for smooth dogfish indicates that smooth dogfish are not overfished and not experiencing overfishing (SEDAR, 2015).

### MANAGEMENT PROGRAM

Smooth dogfish is jointly managed by NOAA Fisheries and [ASMFC](#). In November 2018, NOAA Fisheries published the 2018 Atlantic smooth dogfish quota of 1,802.6 dressed weight (dw) mt (3,973,902 dw lbs). This quota level has not been changed since the 2017 specification. In 2018, less than a quarter of the Atlantic smooth dogfish quota was harvested. Given that smooth dogfish is not overfished, and overfishing is not occurring, up to 50% of the (federal) base quota can be carried over to the following year if there is an under harvest. NOAA Fisheries rolled over 33% of unused 2018 quota to the 2019 base quota. For the 2019 fishing year, Rhode Island received 1.363% of the coastwide quota, equating to 24.6 dw mt (or 54,167 dw lbs).

For Rhode Island management, the fishing season is from January 1 through December 31. There is no possession limit or minimum size. A Multi-Purpose License or *Non-Restricted Finfish Endorsement* is required by license holders to harvest Smooth dogfish in RI waters.

### FISHERY PERFORMANCE

In 2018, 33 commercial fishers (Table 2) landed 55,053 pounds of smooth dogfish in RI valued at \$19,405 (Table 1).

### DMF RECOMMENDATIONS FOR 2020

At this time, the Division recommends status quo of the current fisheries management plan. Any changes in state waters management would need approval of the ASMFC Coastal Sharks Management Board. Maintain in the non-restricted species category.

## SKATE STOCK STATUS



The skate fishery is broken into two categories: winter skate (wing fishery) and little skate (bait fishery). Based on updated survey data, winter skate are not overfished, and overfishing is not occurring. The average biomass index of winter skate was 6.65 kg/tow, which is above the biomass threshold reference point (2.83 kg/tow) and above the  $B_{msy}$  proxy (5.66 kg/tow). The 2014-2016 average index is above the 2013-2015 index by 24.2%, thus overfishing is determined to not be occurring (GARFO, n.d.).

Little skate are not overfished, and overfishing is not occurring. For little skate, the 2015-2017 NEFSC spring average biomass index of 5.49 kg/tow is above the biomass threshold reference point (3.07 kg/tow) but below the  $B_{msy}$  proxy (6.15 kg/tow). The 2015-2017 average index is below the 2014-2016 average by 2.6%, which is less than the 20% change threshold, thus little skate are determined to be not overfished and overfishing is not occurring (GARFO, n.d.).

## MANAGEMENT PROGRAM

The skate complex is managed on a federal fishing year (May 1 - April 30) by the NEFMC under the [Northeast Skate Complex FMP](#), which specifies federal-water management for seven skate species (barndoor, clearnose, little, rosette, smooth, thorny and winter skates). The FMP has been updated through a series of amendments and framework adjustments, the most recent being Framework Adjustment 5 to the Northeast Skate Complex FMP. The FMP identifies two skate fisheries, the wing and bait fisheries that focus on winter and little skate, respectively.

In an effort to complement the federal FMP, RI has adopted a weekly possession limit for the wing fishery of 18,200 pounds/vessel/week for wings only; or 41,314 pounds/vessel/week for whole skate. The RI state-water bait fishery is managed and a combination of fishing seasons, daily possession limits, and a maximum size. A Multi-Purpose License or *Non-Restricted Finfish Endorsement* is required to harvest skate in RI waters.

## FISHERY PERFORMANCE

In the May 1, 2017 – April 30, 2018 fishing year, 139 commercial fishers (Table 2) landed 1,497,953 pounds (wing weight) of winter skate, a value in RI of \$ 839,618 (Table 1). Also, in 2018, 46 fishers (Table 2) landed 7,064,778 pounds of little skate with a value of \$ 881,935 (Table 1).

## DMF RECOMMENDATIONS FOR 2020

Allowing for a modest increase in effort and would appear to still provide for the directed skate wing and bait skate fisheries to remain open for the entire fishing year. Maintain in the non-restricted species category.

## LONGFIN SQUID



### STOCK STATUS

Based on the [2017 stock assessment update](#), the longfin inshore squid (*Doryteuthis pealeii*) stock is not overfished. In 2016 biomass was estimated to be 73,762mt; much greater than the threshold  $B_{msy}$  proxy of 21,203 mt. The overfishing status could not be determined because there are no fishing mortality reference points for the stock (NEFSC, 2017e).

### MANAGEMENT PROGRAM

Longfin squid is managed on a federal fishing year (May 1 - April 30) by the MAFMC under the FMP for Squid, Atlantic mackerel, and Butterfish. The management unit includes all U.S. waters off the U.S. East Coast. In RI, longfin squid is not a regulated species in state waters. A *Non-Restricted Finfish Endorsement* is required by license holders to harvest longfin squid in RI waters.

### FISHERY PERFORMANCE

In the May 1, 2017 – April 30, 2018 fishing year, 164 commercial fishers (Table 2) landed 14,044,883 pounds of longfin squid in RI valued at \$20,617,445 (Table 1).

### DMF RECOMMENDATIONS FOR 2020

There is no quota established for longfin squid in RI State waters. Maintain in the non-restricted species category.

## NORTHERN SHORTFIN (ILLEX) SQUID



### STOCK STATUS

Northern shortfin squid was last assessed in 2005 at SAW 42 (NEFSC 2006). At SAW 42, it was not possible to evaluate stock status because there were no reliable estimates of stock biomass or fishing mortality rates. Stock status with respect to biomass was unknown (NEFSC, 2005).

### MANAGEMENT PROGRAM

Northern shortfin squid is managed by the MAFMC under the [FMP for the Squid, Atlantic mackerel, and Butterfish](#). The management unit includes all U.S. waters off the U.S. East Coast. In RI, Northern shortfin squid is not a regulated species in state waters. A Multi-Purpose License or *Non-Restricted Finfish Endorsement* is required to harvest northern shortfin squid in RI waters.

### PERFORMANCE OF THE FISHERY IN 2019

In the May 1, 2017 – April 30, 2018 fishing year, 27 commercial fishers (Table 2) landed 20,786,875 pounds of northern shortfin squid in RI worth \$11,887,408 (Table 1).

### DMF RECOMMENDATIONS FOR 2020

There is no quota or regulations established for northern shortfin squid in RI State waters. Maintain in the non-restricted species category.

## 2020 LICENSING RECOMMENDATIONS - NON-RESTRICTED FINFISH ENDORSEMENT

### DMF

The *Non-Restricted Finfish Endorsement* is an open and available to anyone during the application period. The number of these endorsements issued has decreased over the past seven years (Table 4). This decrease in participation has not had a discernible effect on the landings of non-restricted species. It should be noted that this endorsement allows new entrants into the finfish sector, with landings generated from the endorsement used to establish priority in the issuance of the Restricted Finfish Endorsement. **The Division recommends maintaining this approach for entry into the fishery and to keep this as an open endorsement for 2019.**

### RIMFC

At their meeting on October 15, 2019, the Council did not offer any recommendations to alter the open entry status of the Non-Restricted Finfish Endorsement.

# SHELLFISH

## BAY QUAHOG



### RESOURCE ASSESSMENT

A formal, peer-reviewed stock assessment does not currently exist, but is being developed. However, both landings and relative abundance indices (the latter derived from DEM's hydraulic clam dredge survey) suggest the resource has been stable over the last several years. A new assessment is being developed to better assess the stock's status and improve its scientific rigor.

### MANAGEMENT PROGRAM

A minimum size of 1 inch (hinge width) and daily possession limits have been established, with reduced possession limits established in Shellfish Management Areas (SMA) to further manage harvest. The fishery is open year-round to RI residents only. A Multi-Purpose License or *Bay Quahog Endorsement* is required to harvest bay quahogs in RI waters.

In 2015, the exit:entry ratio for the *Bay Quahog Endorsement* was changed from 2:1 to 1:1, believing that the number of active fishermen and corresponding effort is more an industry-based economic issue than a resource management or availability issue. While landings have slightly declined over the past five years, the economic value has remained relatively stable. As such, the Division believes that maintaining the 1:1 ratio to increase in number of people participating in the fishery is not having a negative impact and should be continued.

### FISHERY PERFORMANCE

In 2018, 538 commercial fishers (Table 2) landed 512,678 meat weight pounds of bay quahogs, in RI worth \$4,805,137 (Table 1).

## 2020 LICENSING RECOMMENDATIONS - BAY QUAHOG ENDORSEMENT

### DMF

**The Division recommends maintaining effort at current levels by maintaining the 1:1 exit:entry ratio for the Bay Quahog Endorsement.** In 2019, 36 licenses eligible to harvest quahog were retired (8 MPURP, 12 PEL QUOH, 16 CFL QUOH). Under the current management program, *this would result in 36 new quahog endorsements on the CFL being issued in 2020.*

### RIMFC

At their meeting on October 15, 2019, the Council did not offer any recommendations to alter the exit:entry ratio for the Bay Quahog Endorsement.

## SOFT-SHELL CLAM



### RESOURCE ASSESSMENT

A dynamic depletion model for open populations, based on the work of Restrepo (1998) and Sosa-Cordero (2003), suggested that the soft shell clam population declined from 2006 to 2011 with recruitment failing to replace fishery removals (Gibson 2012). Thus, overfishing was occurring. Since 2012 the model has not been updated due to a collapse in the fishery and lack of a depletion. During the peak of the fishery in 2010, an increase in minimum size, by itself, did not stop overfishing, and catch limits needed to be reduced to less than three bushels per day to bring fishing mortality rates into balance with resource productivity (Gibson 2012).

In addition, there is evidence of a range-wide decline of soft-shell clams in response to *Mya* leukemia. (Metzger et al. 2016; Walker et al. 2009). In RI, densities have substantially declined in both fished and unfished soft-shell clam beds. Landings of soft-shelled clams continue to decline. Results from work in the coastal ponds combined with anecdotal observations and landings suggest that the stock is severely depleted.

### MANAGEMENT PROGRAM

A minimum size of 2 inches (longest axis) and daily possession limits have been established, with reduced possession limits established in SMAs to further manage harvest. The fishery is open year-round to RI residents only. A Multi-Purpose License or *Bay Quahog Endorsement* is required to harvest soft-shell clams in RI waters. The current exit:entry ratio for soft shell clam license endorsements 5:1. The Division is concerned with the low abundance of soft shell clams and thus supports a conservative approach to allowing new entrants in the fishery.

### FISHERY PERFORMANCE

In 2018, 31 commercial fishers (Table 2) landed 1,055 pounds meat weight of soft-shell clams in RI, valued at \$16,547 (Table 1). Currently, fishery landings are at the lowest recorded levels in the history of the time series.

## 2020 LICENSING RECOMMENDATIONS - SOFT-SHELL CLAM ENDORSEMENT

### DMF

Due to the continued poor status of the resource, **the Division recommends reducing effort by increasing the exit:entry ratio or prohibiting new entrants into the fishery.** In 2019, 23 licenses eligible to harvest soft shell clam were retired (8 MPURP, 7 PEL SSCLM, 8 CFL SSCLM). At the current 5:1 exit:entry ratio, ***this would result in 6 new CFL soft shell clam endorsements being issued in 2020.***

## RIMFC

At their meeting on October 15, 2019, the Council did not offer any recommendations to alter the exit:entry ratio for the Soft-Shell Clam Endorsement.

## WHELK (Channeled and Knobbed Whelk)



### RESOURCE ASSESSMENT

In 2010, DMF conducted its first comprehensive analytical assessment on whelk resources in Rhode Island using a Biomass Dynamic Model (BDM) (Gibson 2010). The whelk BDM stock assessment was updated in 2016 and included data through 2016 and resulted in an estimated  $F_{msy}=0.53$ . A target F rate was also developed for this fishery as a precautionary measure, the updated target F rate is 0.39. F has risen since the original assessment and is now estimated to be at  $F_{2015} = 0.5$ , which is at or above both  $F_{msy}$  and the F target level, so overfishing is likely occurring. Stock biomass is declining but remains above the threshold for overfished status. An updated whelk stock assessment has not been performed since 2016.

### MANAGEMENT PROGRAM

The two species of whelk commonly landed in RI are managed under the same regulatory provisions. The fishery is open year-round to RI residents only. All whelks must be landed whole in the shell and adhere to a minimum size (3-inch shell width or 5  $\frac{3}{8}$  inch shell length). A commercial possession limit of 35 bushels/day and a 300-pot limit/licensee have been established in rule. Effort is managed by restricting access to the fishery to MPURP holders or PEL and CFL license holders who hold a *Whelk Endorsement*. Eligibility for this endorsement is restricted to holders of a PEL or CFL, who already hold an actively fished *Quahog or Soft-Shell Clam Endorsement*.

### FISHERY PERFORMANCE

In 2018, 109 commercial fishers (Table 2) landed 678,433 pounds live weight of whelk (species combined) in RI, with a value of \$2,094,733 (Table 1). Of these two species commonly landed in RI, channeled whelk constitutes 98% of reported landings. Since peaking in 2012, whelk landings fluctuated but generally decreased during 2013-2016, however landings increased in 2017 and again in 2018 with total landings (all species) in 2018 of 674,433 pounds live weight, a 48% increase compared to 2017 (458,765 pounds live weight). Since peaking in 2010, the average whelk landings per license show an overall decreasing trend from 2011-2016 but increased sharply in 2017 (4,498 pounds/fisher) with an 86% increase over the 2016 average (2,421 pounds/fisher). Average whelk landings per fisher increased again in 2018 up to 6,224 pounds/fisher, a 38% increase over the 2017 average.

## 2020 LICENSING RECOMMENDATIONS - WHELK ENDORSEMENT

### DMF

Maintain effort at current levels by maintaining the restriction of new issuance of the whelk endorsement only to active quahog and soft-shell clam harvesters.

## RIMFC

At their meeting on October 15, 2019, the Council did not offer any recommendations to alter the eligibility criteria for the Whelk Endorsement.

## OYSTER



### STOCK STATUS

The status of the RI oyster stock is currently unassessed, but is considered greatly depressed compared to historic levels (Beck et al. 2011; Griffin 2016). According to local researchers studying oyster populations within Narragansett Bay, the effects of disease, environmental conditions, poor sets of new recruits, and fishing pressure are all responsible for the sharp decline

in abundance levels (Oviatt et al. 1998). Given the low abundance of the wild oyster population, increased fishing pressure would facilitate even greater depletions of the resource. Several oyster restoration and enhancement projects are currently being conducting in RI waters, as well as research investigating factors influencing recruitment or lack thereof, on natural and restored reefs. Until levels of recruitment increase, the stock will likely remain severely depleted. Further investigation into the effects of fishing effort will be revisited when the stock has recovered.

### CURRENT MANAGEMENT PROGRAM

Oysters are managed under the *Shellfish Other Endorsement*, which is an open entry endorsement. Minimum size and possession limits are established, with reduced possession limits in SMAs. Oyster restoration efforts are being conducted in a number of coastal ponds and portions of the Narragansett Bay, aimed at identifying the best restoration practices for establishing oyster reefs in the closed areas.

### FISHERY PERFORMANCE

In 2018, 28 commercial fishers (Table 2) landed 7,425 meat weight pounds, in RI worth \$31,948 (Table 1).

## OTHER SHELLFISH



### STOCK STATUS

Other species of shellfish commercially harvested within Rhode Island waters besides oysters include blue mussels, bay scallops, sea scallops, surf clams and razor clams. These species are not routinely assessed by DEM, in large part due to the low volume of landings, which results in a lack of available data to conduct comprehensive analytical assessments on the status of these populations. However, landings data and anecdotal evidence from the commercial

fishing industry are reviewed annually by Marine Fisheries and are used for identifying species that warrant further research.

### CURRENT MANAGEMENT PROGRAM

Species of shellfish other than bay quahog, soft-shell clam, and whelk are included and managed under the *Shellfish Other Endorsement*. Minimum size and possession limits are established for oysters, bay scallop, sea scallop, and surf clam. In addition to creating SMAs to support Oyster management (e.g., Jacobs Point, Bissel Cove, Narrow River, Green Hill Pond), the Sakonnet River SMA was created for the management of surf clams. The *Shellfish Other Endorsement* is an open license category available to any license holder and is not managed with an exit/entry ratio system.

### FISHERY PERFORMANCE

In 2018, 5 commercial fishers (table 2) landed 2,628 meat weight pounds of other shellfish species not including oysters, worth \$1,831 (Table 1). Combined with oyster landings, fishers of all shellfish other species landed a total of 10,053 meat weight pounds, worth \$33,779.

## 2020 LICENSING RECOMMENDATIONS - SHELLFISH OTHER ENDORSEMENT

### DMF

The Division recommends that the *Shellfish Other Endorsement* remains an open license category available to any license holder.

### RIMFC

At their meeting on October 15, 2019, the Council did not offer any recommendations to alter the open entry status of the Shellfish Other Endorsement.

# CRUSTACEANS

## LOBSTER



### STOCK STATUS

The [2015 American Lobster Benchmark Stock Assessment and Peer Review Report](#) indicates that the GOM /GB stock is at record high abundance and recruitment, whereas the SNE stock is at record low abundance and recruitment. The GOM/GB stock is not overfished and not experiencing overfishing. Conversely, the SNE stock is severely depleted with poor prospects of

recovery, necessitating protection (ASMFC, 2015).

### GOM/GB

GOM/GB stock abundance has increased since 1979, but at an accelerated pace since 2007. Current (i.e. 2008 – 2013) stock abundance is at an all-time high and recruitment has remained high. However, since 2012, there have been consistent declines in the young-of-year lobster surveys in the GOM/GB stock. This has been speculated to foreshadow declines in recruitment and landings (ASMFC, 2015).

### SNE

SNE stock abundance increased from the early 1980s, peaked during the late 1990s, then declined steeply through the early 2000s to a record low in 2013. Both the stock assessment and its peer review supported the conclusion that the SNE stock is severely depleted, with record low abundance and recruitment failure. This poor stock condition can be attributed to several factors including changing environmental conditions (e.g. warming waters and increased predation) and continued fishing mortality. Declines in population abundance are most pronounced in the inshore portion of the stock where environmental conditions have been increasingly unfavorable for lobsters since the late 1990s (ASMFC, 2015). Despite attrition among the commercial fleet and fewer traps fished for lobster, the population has continued to decline.

Declines in catch and fishery-independent survey indices in the offshore portion are evident as well; however, they are not as severe (ASMFC, 2015). It is believed the offshore area of SNE depends on nearshore larval settlement and offshore migration as the source of recruits (e.g., young of the year lobsters). Therefore, unless fishing effort is curtailed, the offshore component will be in jeopardy in the future when the poor year classes fail to materialize offshore.

### MANAGEMENT PROGRAM

Lobster is managed by the ASMFC through the [FMP for lobster](#) and its subsequent [amendments and addenda](#), which is organized by Lobster Conservation Management Areas (LCMA). Rhode Island state waters comprise a portion of LCMA 2. DEM complies with the FMP through a set of management measures including minimum/maximum gauge and escape vent sizes, trap limits, protection of egg-

bearing females, v-notching, a trap reduction schedule (currently in year 4 of a 6-year period), and a 10% conservation tax on trap allocation transfers designed to further reduce the number of traps fished and fishing mortality. Both state (RI-MA) and federal waters are included in LCMA 2, requiring cooperative management. Additionally, in RI, participants in the lobster fishery must possess either a Multipurpose Fishing License, a Principal Effort license with a *Lobster Endorsement*, or a Commercial Fishing License with *Lobster Endorsement*. Participants who do not hold a LCMA 2 Lobster Trap Allocation (LTA) are prohibited from harvesting lobster from pots and are limited to 100 lobsters per day or 500 lobsters for fishing trips 5 days or longer.

## FISHERY PERFORMANCE

The regional lobster resource has experienced a significant decline in abundance since the 1990's, which has resulted in the removal of latent effort in the fishery and reduced landings. The number of participants landing lobster decreased from 2017 to 2018 (Table 2). The trap reduction program continued in 2018-2019, with total traps reduced based on the 5% reduction and the conservation tax (Table 7). In 2018, 136 fishers (Table 2) landed 1,904,244 pounds of lobster in RI, with an ex-vessel value of \$10,947,054 (Table 1).

## DIVISION RECOMMENDATIONS FOR 2020

The state will continue to work with the ASMFC to rebuild the lobster resource throughout the region. Attrition is still occurring in the industry. The state began to reduce effort through the trap reductions included in Addendum XVIII starting in 2016. This effort aimed to remove latent effort from the fishery that could be reactivated if resource conditions improve, as well as reduce fishing mortality. Participation in LCMA 2 is based on historical performance and the state has reviewed lobster licensing and made appropriate changes in preparation for limited access-historical performance. An LTA transferability program that was initiated with Addendum XII has been developed in consultation with ASMFC and NOAA Fisheries via Addenda XVIII, XIX, and XXI. This can be used to bring new individuals into the fishery without increasing effort above that qualified in the initial trap allocation.

## 2020 LICENSING RECOMMENDATIONS - LOBSTER ENDORSEMENT

### DMF

In view of ASMFC compliance requirements and state law, it is recommended that the moratorium on the issuance of new lobster endorsements be continued for 2020.

### RIMFC

At their meeting on October 15, 2019, the Council did not offer any recommendations to alter the closed status of the Lobster Endorsement.

## HORSESHOE CRAB



### STOCK STATUS

The [2019 benchmark stock assessment](#) of horseshoe crab indicates high variability in trends among the coastal regions. The Southeast is the only area indicating an increase in abundance while Delaware Bay and the Northeast show consistent abundance and the New York region is seeing a decline (ASMFC, 2019). While this is an improvement for the Northeast region from the 2013 stock assessment update status which exhibited a decline, Rhode Island specific data continues to show a downward trend. This neutral status in 2019 was achieved by

Rhode Island's negative trend being counterbalanced by the improving Massachusetts stock status.

### MANAGEMENT PROGRAM

The commercial horseshoe crab fishery is managed at the regional level by the ASMFC [Interstate FMP for horseshoe crabs](#) and its subsequent [addenda](#). In RI waters, horseshoe crab is included and managed under the *Non-Lobster Crustacean Endorsement*. DEM uses temporal closures, possession limits, state established quotas, and a permitting/reporting program to achieve compliance with the FMP. In 2017, DEM regulations were adopted establishing broader time closures, improved reporting and reporting compliance measures, a minimum size of 7" (prosomal width), and daily possession limits for the bait fishery of 60 crabs per person per day. The biomedical daily possession limit is equal to the total annual quota.

### FISHERY PERFORMANCE

The use of time closures and possession limits in the State's bait fishery has greatly restricted harvest during peak spawning activity and resulted in reduced fishing mortality rates and harvest equity among participants. However, due to a small quota and the nature of accountable commercial harvest, overages may occur annually and must be deducted from the following year possibly resulting in a shorter harvest season and may limit resource access. Annual bait harvest since 2017 has been less than 20% of the allotted quota. Biomedical harvest rates are driven by the needs of biomedical companies which bleed the crabs for medical testing. The estimated mortality rate of bled crabs is 15% (ASMFC, 2019). In 2018, 19 fishers (Table 2) contributed to the combined bait and biomedical fisheries landed 68,171 pounds of horseshoe crab worth \$29,737 in RI (Table 1).

### DMF RECOMMENDATIONS FOR 2020

The Division will continue to monitor harvest levels to determine the effects of the management measures and strategy implemented in 2017, however it is too soon to conclude if these measures are effective as intended as this species takes 10 years to reach maturity. Considering the bait fishery has remained open longer than it has in the last 10 years could be an indication of its effectiveness. The Division recommends maintaining as a non-restricted species in the *Other Crustaceans* endorsement category for 2020.

## JONAH CRAB



### STOCK STATUS

Previously regarded as bycatch in the American lobster fishery, Jonah crab started gaining attention in the mid 2000's as commercial landings started to increase, reaching a high of nearly 20 million pounds in 2018 (ASMFC, n.d.). As commercial landings have increased and since ASMFC has started to manage Jonah crab, state, federal, and academic scientists have endeavored to collect data on Jonah crab life history and population characteristics to perform a

formal stock assessment. No time table has been set for such an assessment.

### MANAGEMENT PROGRAM

Jonah crab is managed at the regional level by the ASMFC [Interstate FMP for Jonah crab](#) and its subsequent addenda I-III. The FMP was first adopted in 2016 and includes an LTA requirement, a minimum size limit of 4.75", and the prohibition of egg bearing females. Pursuant to the FMP, a control date of June 1, 2016 was established in RI. [Addendum I](#) establishes incidental bycatch limits for non-trap gear and non-lobster trap gear, [Addendum II](#) sets limits on claw harvest, and [Addendum III](#) stipulates requirements for harvester reporting and biological data collection.

Per Addendum I, a bycatch limit of 1,000 crabs per trip for non-trap and non-lobster fishermen was set. To avoid the unintentional outcome of this addendum of creating small industries operating solely under this provision, the ASMFC Jonah Crab Board aimed to define bycatch. As per ASMFC, Jonah crab caught under the bycatch limit must comprise an amount lower, in pounds, than the target species the deployed gear is targeting. Target species is further defined as: "those species primarily sought by the fishermen in the fishery" and are "the subject of directed fishing effort." Addendum II, adopted in early 2017, allows Jonah crab fishermen to detach and harvest claws at sea, with a required minimum claw length of 2.75" if the volume of claws landed is greater than five gallons. Claw landings less than five gallons do not have to meet the minimum claw length standard.

In RI, Jonah crab is included and managed under the *Non-lobster Crustacean Endorsement*. The directed fishery is limited to any licensed person who holds an LTA, or any person who does not hold an LTA but can prove participation in the Jonah crab fishery prior to the control date.

### FISHERY PERFORMANCE

In 2018, 67 fishers (Table 2) landed 4,645,747 pounds of Jonah Crab, with an ex-vessel value of \$4,295,861 (Table 1).

### DMF RECOMMENDATIONS FOR 2020

The Division recommends that RI remains compliant with the ASMFC provisions, and continues its work toward collecting biological and fishery information on Jonah Crab for a future, formal stock assessment. No changes to Jonah crab licensing requirements are recommended for 2019. Maintain as a non-restricted crustacean species as well as continue requirements for the directed fishery.

## ATLANTIC ROCK CRAB



### STOCK STATUS

Status unknown; No stock assessment has been performed on Atlantic rock crab.

### MANAGEMENT PROGRAM

In RI, Atlantic rock crab is included and managed under the *Non-Lobster Crustacean Endorsement*. As an unrestricted/open endorsement, any license holder may access the fishery. There is neither a possession limit nor any additional restrictions in effort or harvest at this time

A control date was established on June 1, 2016.

### FISHERY PERFORMANCE

Being an unregulated fishery, overall performance cannot be determined. In 2018, 31 fishers (Table 2) landed 67,447 pounds of Atlantic rock crab with an ex-vessel value of \$35,322 (Table 1).

### DMF RECOMMENDATIONS FOR 2020

The Atlantic rock crab fishery is not managed under any FMP; it is an unregulated species. Effort limitations are not subject to lobster trap allocation and tagging requirements making enforcement of untagged traps problematic in state waters. Consideration should be given to a dedicated trap tag program to potentially control effort and identify fishery specific gear. No changes to licensing requirements are recommended for 2019. Maintain as a non-restricted crustacean.

## OTHER CRUSTACEANS



### STOCK STATUS

Commercial landings in RI of crustacean species other than lobster, horseshoe crab, Jonah crab, and Atlantic rock crab include green crab (*Carcinus maenas*), blue crab (*Callinectes sapidus*), deep-sea red crab (*Chaceon quinque-dens*), and mantis shrimp (*Squilla empusa*). These species are not routinely assessed by DEM, in large part due to the low volume of landings, which results in a lack of available data to conduct comprehensive analytical assessments. However, landings data and anecdotal evidence

from the commercial fishing industry are reviewed annually by DMF and are useful pieces of information in identifying populations that warrant further research.

### MANAGEMENT PROGRAM

In RI, Blue crab are subject to a minimum size of 5” from shell tip to tip. Harvest is limited to 25 individuals, unless using a scoop or crab net, trot, or hand line. Deep-sea red crab is managed by a federal permit.

### FISHERY PERFORMANCE

In 2018, 11 fishers (Table 2) landed 27,625 pounds of these species, in RI valued at \$6,958 (Table 1).

## 2020 LICENSING RECOMMENDATIONS - NON-LOBSTER CRUSTACEAN ENDORSEMENT

### DMF

The Division recommends that the Non-Lobster Crustacean Endorsement remains an open license category available to any license holder and is not managed with an exit:entry ratio system.

### RIMFC

At their meeting on October 15, 2019, the Council did not offer any recommendations to alter the open entry status of the Non-Lobster Crustacean Endorsement.

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## TABLES

Table 1. 2018 pounds landed and total x-vessel value for species landed in Rhode Island.

SPECIES	POUNDS	VALUE (X-VESSEL)
Black Sea Bass	375,853	1,440,258
Scup	4,712,575	2,738,740
Striped Bass	176,639	782,131
Summer Flounder	1,022,618	4,706,067
Tautog	51,414	196,178
Bluefish	237,121	245,049
Atlantic Cod	65,696	151,667
Atlantic Herring	2,159,432	571,543
Menhaden	722,388	54,990
Monkfish	3,057,088	2,329,546
Winter Flounder	191,198	574,222
Skates (Wings)	1,497,953	839,618
Skates (Bait)	7,064,778	881,935
Spiny Dogfish	197,732	32,359
Smooth Dogfish	55,053	19,405
Squid (Longfin)	14,044,883	20,617,445
Squid (Illex)	20,786,875	11,887,408
Lobster	1,904,244	10,947,054
Jonah Crab	4,645,747	4,295,861
Horseshoe Crab	68,171	29,737
Atlantic Rock Crab	67,447	35,322
Other Crabs	27,625	6,958
Quahog*	512,678	4,805,137
Soft-shell Clam*	1,055	16,547
Whelk (Channeled and Knobbed)	678,433	2,094,733
Other Shellfish*	2,628	1,831
Sea Scallops*	2,492,618	22,170,026
Oyster*	7,425	31,948
* meat weight		

Table 2: Number of participants per species per year (2014-2018)

SPECIES	2014	2015	2016	2017	2018
Bait skate	32	30	36	42	46
Bluefish	370	340	362	339	278
Quahog	539	524	562	538	538
Clam, soft	58	62	41	35	31
Cod, Atlantic	109	127	139	107	87
Crab, Atlantic Rock	25	20	31	23	31
Crab, Horseshoe	6	3	17	17	19
Crab, Jonah	74	67	69	74	67
Dogfish, Smooth	34	42	32	39	33
Dogfish, Spiny	57	54	57	48	35
Flounder, Summer (fluke)	491	484	527	502	492
Flounder, Winter	140	120	110	115	100
Monkfish	164	145	165	174	174
Herring, Atlantic	30	32	34	30	27
Lobster	164	149	154	149	136
Menhaden	9	9	8	11	7
Other crustacean	6	13	12	12	11
Oyster, eastern	33	39	20	14	28
Sea Scallop	49	36	56	54	57
Scup	449	418	450	437	433
Black Sea Bass	474	484	504	543	507
Shellfish other	5	5	3	4	5
Skate wings	138	127	140	142	139
Squid, long finned (loligo)	161	153	162	160	164
Squid, short finned (illex)	15	6	12	21	27
Striped bass	330	292	267	286	267
Tautog	232	226	231	250	242
Whelk	159	153	140	102	109

Table 3. Possession limit (pounds) modifications for common Rhode Island commercial fisheries January through August 14, 2019.

SPECIES	POSSESSION LIMIT (LBS)	POSSESSION LIMIT MODIFICATION
Black Sea Bass	500/wk (1/1)	750/wk (3/3) 850/wk (3/24)
	50/day (5/1)	Closed (6/11)
	50/day (7/1)	Closed (7/17)
Bluefish	1,000/bi-week (1/1)	
	8,000/week (5/1)	12,000/week (6/30)
Scup (Gen. Cat.)	50,000/day (1/1)	
	10,000/wk (5/1)	15,000/wk (7/21) 20,000/wk (8/4)
	50,000/day (1/1)	
Scup (FFT)	Unlimited (5/1)	
	5 fish/vessel (5/20)	
Striped Bass (Gen. Cat.)	5 fish/vessel (7/1)	Closed (7/11)
	Unlimited (4/1)	
Striped Bass (FFT)	100/day (1/1)	
Summer Flounder	50/day (5/1)	75/day (6/9) 100/day (6/30)
	10 fish/vessel (4/1)	Closed (5/24)

Table 4. Historical commercial license counts (2012 – 2019).

LICENSE TYPE	2012	2013	2014	2015	2016	2017	2018	2019
<b>MULTI-PURPOSE LICENSE</b>	853	829	816	804	802	789	771	751
<i>Gillnet Endorsement</i>	233	227	221	218	218	214	213	204
<i>Dockside Sale Endorsement</i>	251	241	236	236	245	242	239	237
<i>Midwater/Pair Trawl Endorsement</i>	131	132	133	137	139	145	145	144
<i>Purse Seine Endorsement</i>	139	134	134	129	136	140	144	145
<b>PRINCIPAL EFFORT LICENSE</b>	690	655	615	593	580	586	585	560
<i>Lobster Endorsement</i>	36	30	27	21	20	19	16	16
<i>Non-lobster Crustacean Endorsement</i>	33	35	36	33	33	35	36	32
<i>Quahog Endorsement</i>	398	376	347	340	322	321	327	305
<i>Restricted Finfish Endorsement</i>	266	262	258	251	252	266	277	279
<i>Non-restricted Finfish Endorsement</i>	131	135	133	130	152	159	168	159
<i>Soft Shelled Clam Endorsement</i>	256	235	204	194	183	186	176	154
<i>Whelk Endorsement</i>	146	118	79	62	53	63	60	55
<i>Dockside Sale Endorsement</i>	13	13	12	11	13	15	14	11
<i>Midwater/Pair Trawl Endorsement</i>	9	8	9	7	10	9	13	13
<i>Purse Seine Endorsement</i>	8	7	6	5	9	9	13	13
<i>Other Shellfish Endorsement</i>	225	211	186	177	177	173	166	148
<b>COMMERCIAL FISHING LICENSE</b>	398	420	404	412	416	429	433	445
<i>Lobster Endorsement</i>	16	15	14	14	12	11	9	7
<i>Non-lobster Crustacean Endorsement</i>	114	100	101	95	95	104	104	110
<i>Quahog Endorsement</i>	158	165	181	189	197	217	215	227
<i>Restricted Finfish Endorsement</i>	0	0	0	0	0	0	0	0
<i>Non-restricted Finfish Endorsement</i>	252	256	240	243	248	253	270	213
<i>Soft Shelled Clam Endorsement</i>	174	163	155	148	139	129	124	125
<i>Whelk Endorsement</i>	109	92	75	65	58	56	53	50
<i>Dockside Sale Endorsement</i>	16	14	16	16	15	18	17	18
<i>Midwater/Pair Trawl Endorsement</i>	40	46	39	39	40	37	41	41
<i>Purse Seine Endorsement</i>	42	40	42	43	41	40	42	45
<i>Other Shellfish Endorsement</i>	171	160	149	152	142	129	145	158
<b>OVER 65 SHELLFISH LICENSE</b>	240	268	289	309	350	369	389	372
<b>STUDENT SHELLFISH LICENSE</b>	49	48	47	37	48	39	30	37

Table 5. Historical RI whelk landings and value (2006-2018).

Year	Total Landings (Live Pounds)	Total Landings Value (\$)
2006	368,028	450,137.43
2007	361,486	336,485.75
2008	423,952	407,997.33
2009	716,386	742,411.90
2010	659,204	973,404.09
2011	746,495	1,312,836.57
2012	773,885	1,599,227.40
2013	584,896	1,268,155.53
2014	446,154	1,036,116.42
2015	493,166	1,279,090.83
2016	338,914	909,068.20
2017	458,765	1,318,209.76
2018	678,433	2,094,732.73

Table 6. Rhode Island commercial fishing license and lobster license/endorsement issuance data, 2014-2019 fishing years.

LICENSE TYPE	2014	2015	2016	2017	2018	2019
<b>MULTI-PURPOSE LICENSE</b>	816	804	802	789	771	751
MPL with Area 2 Lobster Trap Allocation (LTA)	308	298	304	304	304	302
Dockside Sale Endorsement	236	236	245	242	239	237
<b>PRINCIPAL EFFORT LICENSE</b>	615	593	580	586	585	560
Lobster Endorsement with LTA	29	25	21	19	19	19
Non-Lobster Crustacean Endorsement	36	33	33	35	36	32
Dockside Sale Endorsement	12	11	13	15	14	11
<b>COMMERCIAL FISHING LICENSE</b>	404	412	416	429	433	445
Lobster Endorsement with LTA	4	4	4	4	4	3
Non-Lobster Crustacean Endorsement	101	95	95	104	104	110
Dockside Sale Endorsement	16	16	15	18	17	18

Table 7. Description of allocated traps, maximum traps fished, and the reduction of traps in 2018. Traps retired include those associated with the reduction program decrease and the conservation transfer tax.

AREA	# OF TRAPS ALLOCATED	# OF TRAPS TRANSFERRED	MAX # OF TRAPS FISHED	# OF TRAPS RETIRED DUE TO REDUCTIONS
Area 2	70,321	3,034	35,406	3,811
Area 3	33,529	100	31,722	1,697

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- **Other crustaceans (blue crab):** <https://www.instructables.com/id/Crabbing-For-Beginners/>

## SIGNATURE PAGE

Plan approved:

A handwritten signature in black ink that reads "Jason E. McNamee". The signature is written in a cursive style and is positioned above a horizontal line.

Dr. Jason McNamee, Chief  
Division of Marine Fisheries

**October 16, 2019**

Date

**RHODE ISLAND GOVERNMENT REGISTER  
PUBLIC NOTICE OF PROPOSED RULEMAKING**

**DEPARTMENT OF ENVIRONMENTAL MANAGEMENT**

**Title of Rule:** PART 1 – Definitions and General Provisions (250-RICR-90-00-1)

**Rule Identifier:** 250-RICR-90-00-1

**Rulemaking Action:** Proposed Amendment

**Important Dates:**

Date of Public Notice: 10/30/2019

Hearing Date: 11/12/2019

End of Public Comment: 11/29/2019

**Authority for this Rulemaking:**

R.I. Gen. Laws Title 20, R.I. Gen. Laws Chapters 42-17.1, 42-17.6, and 42-17.7, and in accordance with R.I. Gen. Laws Chapter 42-35, Administrative Procedures Act

**Summary of Rulemaking Action:**

1. Section 1.6(A)(1)(b)(2): Remove provision that specifies quota management for tautog over-harvest, as the summer sub-period referenced no longer exists in rule.
2. Section 1.6(H): Establish rule for high-grading prohibition.

**Additional Information and Comments:**

All interested parties are invited to request additional information or submit written or oral comments concerning the proposed amendment until November 29, 2019 by contacting the appropriate party at the address listed below:

Peter Duhamel  
Department of Environmental Management  
3 Fort Wetherill Road  
Jamestown, RI 02835  
peter.duhamel@dem.ri.gov

**Public Hearing:**

A public hearing, in accordance with R.I. Gen. Laws § 42-35-2.8, to consider the proposed amendment shall be held on November 12, 2019 at 6:00 pm at URI Bay Campus, Corless Auditorium, South Ferry Road, Narragansett, RI 02882 at which time and place all persons interested therein will be heard. The seating capacity of the room will be enforced and therefore the number of persons participating in the hearing may be limited at any given time by the hearing officer, in order to comply with safety and fire codes.

The place of the public hearing is accessible to individuals who are handicapped. If communication assistance (readers/interpreters/captioners) is needed, or any other accommodation to ensure equal participation, please call 401-423-1927 or RI Relay 711 at least three (3) business days prior to the meeting so arrangements can be made to provide such assistance at no cost to the person requesting.

**Regulatory Analysis Summary and Supporting Documentation:**

In the development of the proposed amendment consideration was given to: (1) alternative approaches; (2) overlap or duplication with other statutory and regulatory provisions; and (3) significant economic impact on small business. No alternative approach, duplication, or overlap was identified based upon available information.

For full regulatory analysis or supporting documentation see agency contact person above.

**Public Hearing**  
**November 12, 2019**

**Proposed/annotated amendments**

Note: Proposed new language is identified as red, underline; proposed language to be deleted is identified as ~~red-stricken~~.

**250-RICR-90-00-1**

**TITLE 250 – DEPARTMENT OF ENVIRONMENTAL MANAGEMENT**

**CHAPTER 90 – MARINE FISHERIES**

**SUBCHAPTER 00 – N/A**

**PART 1 – Definitions and General Provisions**

**1.1 Purpose**

The purpose of these Rules and Regulations is to supplement and simplify and/or clarify existing regulations in order to more efficiently manage the marine resources of Rhode Island.

**1.2 Authority**

These Rules and Regulations are promulgated pursuant to R.I. Gen. Laws Title 20, R.I. Gen. Laws Chapters 42-17.1, 42-17.6, and 42-17.7, and in accordance with R.I. Gen. Laws Chapter 42-35, Administrative Procedures Act.

**1.3 Application**

The terms and provisions of these Rules and Regulations shall be liberally construed to permit the Department to effectuate the purposes of state law, goals, and policies.

**1.4 Severability**

If any provision of these Rules and Regulations, or the application thereof to any person or circumstances, is held invalid by a court of competent jurisdiction, the validity of the remainder of the Rules and Regulations shall not be affected thereby.

## 1.5 Superseded Rules and Regulations

On the effective date of these Rules and Regulations, all previous Rules and Regulations, and any policies regarding the administration and enforcement of these regulations shall be superseded. However, any enforcement action taken by, or application submitted to, the Department prior to the effective date of these Rules and Regulations shall be governed by the Rules and Regulations in effect at the time the enforcement action was taken, or application filed.

## 1.6 General Provisions

### A. Quota Management:

#### 1. Modification of sub-period allocations based on under/over-harvest:

- a. Under-harvest: Any un-harvested quota from a sub-period allocation will be equally distributed to the allocations of the remaining sub-periods in the same calendar year.
- b. Over-harvest:
  - (1) Any over-harvest of a sub-period allocation will be deducted from the allocations of the remaining sub-periods in the same calendar year.
  - (2) ~~Annually, the DFW will charge a~~Any over-harvest from the previous year will be deducted from ~~to~~ the entire state allocation of the current year before redistributing according to the species-specific management plan. ~~For the Tautog fishery, if an over-harvest has occurred for the entire year, that over-harvest will be deducted from the Summer sub-period of the following calendar year.~~

### B. Modifications of allocations, seasons and possession limits: For quota managed species, in order to maintain compliance with a federal or regional fisheries management plan (FMP), the DEM has the authority to distribute allocations, including the distribution of allocations among the various gear types, modify possession limits, and change seasons, unless specifically prohibited by the Secretary of Commerce or the ASMFC, in the following manner:

1. Allocation changes: If DEM projects that an allocation assigned for a sub-period, or assigned to be available for taking by a particular gear type during that sub-period, may be exhausted prior to the end of the sub-period, or may not be met for a sub-period, DEM may modify the allocation.

2. Possession limit changes: If DEM projects that the allocation for a given species may be exhausted prior to the end of a sub-period or may not be met for a sub-period, DEM may modify the possession limit.
3. If the quota for a sub-period allocation is fully harvested prior to the end of the sub-period, the DEM will close the fishery for the remainder of the sub-period.
4. Notification of modifications to possession limits and/or seasons for marine species regulated under quota: Such notification shall take place in accordance with R.I. Gen. Laws § 20-1-12.1, and be provided to the public via the Marine Fisheries listserve, dedicated phone line (423-1920) and webpage. It is the responsibility of the licensed fishermen to know and abide by all possession limits and seasons.

C. Transiting:

1. Finfish:
  - a. During the closure of a Rhode Island state allocated fishery quota, a federally permitted vessel fishing in the Exclusive Economic Zone may transit Rhode Island state waters for the purpose of landing that species in another state, provided the vessel is in compliance with their federal permit, and the vessel nets are stowed.
  - b. A federally permitted vessel fishing in the Exclusive Economic Zone may transit Rhode Island state waters for the purpose of landing a species in Rhode Island, provided that the species in possession do not have a state allocated quota that is currently closed, provided the vessel is in compliance with their federal permit, provided the vessel nets are stowed, and provided that the owner or operator possesses a valid RI Landing License.
  - c. A vessel in possession of a regulated species harvested in an open area of state waters may transit a closed portion of state waters in possession of that species for the purpose of landing, provided the operator of the vessel has a valid fishing license, and if fishing with nets, the nets are stowed.
2. Shellfish:
  - a. During the closure of a Rhode Island state allocated fishery quota, a federally permitted vessel fishing in the Exclusive Economic Zone may traverse Rhode Island state waters for the purpose of landing that species in another state, provided the vessel is in compliance with their federal permit, and all gear capable of harvesting shellfish is stowed and not engaged in the act of taking or harvesting while transiting state waters.

- b. A federally permitted vessel fishing in the Exclusive Economic Zone may traverse Rhode Island state waters for the purpose of landing a species in Rhode Island, provided that the species in possession do not have a state allocated quota that is currently closed, provided the vessel is in compliance with their federal permit, and provided that all gear capable of harvesting shellfish is stowed and not engaged in the act of taking or harvesting while transiting state waters, and provided that the owner or operator possesses a valid RI Landing License pursuant to DEM's Commercial and Recreational Saltwater Fishing Licensing Regulations, Part 2 of this Subchapter.

D. Stowage of nets: Vessels possessing trawl devices while harvesting summer flounder, scup, black sea bass, or winter flounder, in excess of the limits specified in RIMFR may have nets with mesh less than the minimum size specified in the regulations provided that the net is stowed and is not available for immediate use in accordance with this section. A net that conforms to one of the following specifications and that can be shown not to have been in recent use is considered to be "not available for immediate use".

1. A net stowed below deck, provided:
  - a. It is located below the main working deck from which the net is deployed and retrieved;
  - b. The towing wires, including the "leg" wires are detached from the net; and
  - c. It is fan folded (flaked) and bound around its circumference.
2. A net stowed and lashed down on deck, provided:
  - a. It is fan folded (flaked) and bound around its circumference;
  - b. It is securely fastened to the deck or rail of the vessel; and
  - c. The towing wires, including the leg wires, are detached from the net.
3. A net that is on a reel and is covered and secured, provided:
  - a. The entire surface of the net is covered with canvas or other similar material that is securely bound;
  - b. The towing wires, including the leg wires, are detached from the net; and
  - c. The cod end is removed from the net and stored below deck.

4. National Marine Fisheries Service authorized: Nets that are secured in a manner authorized in writing by the National Marine Fisheries Service Regional Director, for the Mid-Atlantic regulated mesh area defined as "that area bounded by the intersection of the outer boundary of the Exclusive Economic Zone (EEZ)."
- E. Possession limit compliance:
1. Licensed party/charter vessels: Possession limit compliance aboard licensed party/charter vessels is determined by dividing the number of fish by the number fishermen onboard the boat.
  2. Multiple licensed recreational fishermen fishing from a single vessel: Possession limit compliance aboard vessels with multiple licensed recreational fishermen will be determined by dividing the number of fish by the number of licensed recreational fishermen on board said vessel, except for tautog, which has a maximum possession limit per vessel.
  3. Size, possession, and daily limit violations on board vessels: In any instance when there is a violation of the size, possession, or daily limit on board a vessel carrying more than one person when the catch is commingled, the violation shall be deemed to have been committed by the owner of the vessel, or the operator of the vessel, if the owner is not on board.
  4. A person who takes marine product /species utilizing a vessel and also without the assistance of a vessel is only allowed one possession limit per calendar day unless an alternative period of time is specifically provided in the governing regulation.
- F. Use of explosives: The use of explosives as a fishing device in the internal and territorial waters of the State of Rhode Island is prohibited.
- G. Transfer at sea: No one may transfer or attempt to transfer at sea, from one vessel to another, any finfish that are subject to these regulations.
- H. High-grading prohibition: Returning legal-size fish to the water after they have been taken into possession for the purposes of retaining another more desirable legal-size fish is prohibited. Tautog that are harvested and kept alive are exempt from this prohibition.
- H.I. Obstruction of migratory fish passage: No person shall obstruct the free passage of anadromous or catadromous fish in any marine waters, river, or stream, of the State of Rhode Island.
- I.J. Reporting: For those fishery participants with a reporting requirement pursuant to the DEM Commercial and Recreational Saltwater Fishing Licensing Regulations (Part 2 of this Subchapter), accurately completed copies of the federal Vessel

Trip Reports or the state reporting forms prescribed by the Director shall be kept in numerical order on board the vessel dating back to January 1<sup>st</sup> and furnished upon request. A vessel shall be exempt from this requirement if the captain of said vessel is currently enrolled in an electronic logbook program. Instead, the vessel must have all records dating back to January 1<sup>st</sup> entered electronically.

JK. Violations for non-compliance: If the ~~DFW and/or the Chief of the Division of Law Enforcement DEM Director~~ determines that there has been non-compliance with the provisions of these regulations or a permit agreement, the owner and/or operator of the ~~permitted~~ vessel ~~and/or license holder~~ shall be advised of such determination and the specific grounds therefore in writing ~~by delivery of same by certified mail or by personal service upon the owner or operator in compliance with the requirements set out in Rule 4 of the Rhode Island Superior Court Rules of Civil Procedure~~. The determination shall specifically include notice that an opportunity for ~~an impartial~~ a hearing is available before the Administrative Adjudication Division pursuant to R.I. Gen. Laws Chapter 42-17.7 relative to either or both the finding that sufficient evidence exists of non-compliance with the provisions of these regulations or the permit agreement as well as the termination of the permit and or the imposition of a penalty pursuant to R.I. Gen. Laws § 20-1-16 ~~as well as the ineligibility to reapply for a permit for the subject vessel for the remainder of the Summer sub-period~~.

KL. Penalties:

1. Judicially imposed penalty for violations: Unless otherwise specifically provided, the violation of any law or rule or regulation relating to wild animals, wild birds, lobsters and fish, marine, freshwater and anadromous fisheries and shellfisheries shall be a misdemeanor, punishable by a fine of not more than five hundred dollars (\$500) or imprisonment for up to ninety (90) days, or both (R.I. Gen. Laws § 20-1-16)
2. Additionally, a person may be subject to the imposition of an administrative penalty pursuant to DEM's Rules and Regulations Governing the Suspension/Revocation of Commercial and Recreational Fishing Licenses (Part 80-00-6 of this Title), licenses issued pursuant to R.I. Gen. Laws Title 20.

LM. Appeals:

1. Denial of a license or permit: Persons denied a license or permit may request an appeal within thirty (30) days of the receipt of the denial as provided by R.I. Gen. Laws Chapter 42-17.7 and pursuant to Part 10-00-1 of this Title, Rules and Regulations for the Administrative Adjudication Division.
2. Enforcement Action: Any person affected by a decision of the Director for an enforcement action pursuant to these regulations may file and appeal

within twenty (20) days after the date of receipt of the enforcement action in accordance with R.I. Gen. Laws Chapter 42-17.7 and Part 10-00-1 of this Title, Rules and Regulations for the Administrative Adjudication Division.

## 1.7 Definition of Terms

"Adequately iced" means the amount and application of ice sufficient to ensure that immediate cooling begins and continues for all shellfish. Ice should be produced from a potable water source and shall be maintained to prevent contamination of shellfish.

"Affidavit" means a sworn statement of facts made under oath as to the truthfulness therein, and made before an authorized person such as a Notary Public. For the purposes of these Rules and Regulations, affidavits must be on forms provided by the Department.

"Agent" means a representative of a licensed dealer with a place of business in the State of Rhode Island wherein transaction records of said dealer are maintained and available for inspection during normal business hours.

"Air-assisted harvest" means the use of an air compressor or any device capable of pressurizing air/gas or compressed gas in a tank, to power any device designed to disturb the substrate, create a vacuum effect or sediment displacement effect in collection of aquatic species.

"Anadromous fish" means any species of fish which ascends rivers or streams from the sea for breeding purposes (e.g. Alewife, Salmon, Shad).

"Angling" means to fish recreationally using hook and line (R.I. Gen. Laws § 20-2.2-3).

"Approved waters" or "Approved growing areas" means marine waters of the State that have been classified by the DEM Division of Water Resources as Approved Areas, fit for the taking of shellfish for human consumption on a regular basis, in accordance with the criteria established by the National Shellfish Sanitation Program (NSSP) Manual of Operations. These classifications may be subject to change as water quality conditions dictate.

"Bait gillnet" means a gillnet not exceeding one hundred (100) feet nor exceeding a mesh size greater than three and three quarters inches (3 3/4") (stretched).

"Bay scallop dredging" means the towing of a bay scallop dredge during the established bay scallop dredging season.

"Bay scallop seed" means a bay scallop with a bright, thin, slightly curved shell with no foreign adherent, the shell having no well-defined raised annual growth line, and the bay scallop being less than one (1) year old.

"Beach seine" means a seine that is deployed from the shore.

"Bill of lading" means an invoice which identifies a shipment of fish, shellfish or crustaceans as to seller, buyer, source, type, quantity and sale price.

"Bullrake" means any curved metal instrument or basket with four (4) or more metal tines (teeth) which is customarily used to harvest quahaugs.

"Bycatch" means marine species which have been harvested, but which are not sold or kept for personal use and includes species that are discarded while a fisher is directing his/her effort toward the harvest of another marine species.

"Bushel" means a standard U.S. bushel, 2150.4 cubic inches capacity (R.I. Gen. Laws § 20-1-3).

"Catadromous fish" means any species which lives in fresh water, but must go to sea for breeding purposes (e.g., American eel, *Anguilla rostrata*).

"Carapace" means the un-segmented body shell of the American lobster.

"Carapace length" means the length of a lobster measured from the rear of the eye socket along a line parallel to the center of the body shell to the rear of the body shell.

"Catastrophic trap tag loss" means the loss of original lobster trap tags in excess of the 10% over-allotment trap tags issued for routine loss, in which instance the original trap tags become invalid and must be replaced in their entirety by catastrophic trap tags.

"Coastal salt pond" means a pond abutting a barrier beach; some are periodically fresh; others are brackish or salt.

"Coastal salt pond channel" means a natural or man-made, temporary or permanent waterway, allowing for the passage of water to and from any coastal salt pond. Distances (in feet) describing the following salt pond channel areas are measured from the seaward extremity of any channel to a point measured in a northerly direction, or as specifically described herein.

#### Coastal Salt Pond Channel Distances

Pond/Channel	Town	Distance
Quicksand	L. Compton	750'
Tunipus	L. Compton	200'

Briggs Marsh	L. Compton	600'
Ship Pond Cove	L. Compton	200'
Long	L. Compton	400'
Round	L. Compton	250'
Nonquit (Puncatest)	Tiverton	1,800'
Nannaquaket (measured from the mouth of the Quaket River to the eastern side of the Nannaquaket Bridge abutment)	Tiverton	400'
Narrow/Pettaquamscutt	Narragansett/N.Kingstown	3,850'
Point Judith (measured in a northerly direction from the mouth of the Pt. Judith Breachway to a line drawn from Strawberry Hill Pt. on the east to High Point on the west)	Narragansett/S.Kingstown	6,000'
Potter (measured from the western entrance of Potter Pond channel to the eastern tip of Gooseberry Island in Pt. Judith Pond)	South Kingstown	2,800'
Card	South Kingstown	200'
Trustom	South Kingstown	500'
Green Hill: Potato Pt. (measured from the easternmost point of Stevens Island in Ninigret/Charlestown Pond to the westernmost point of Potato Point in Green Hill Pond)	S.Kingstown/Charlestown	1,800'
Ninigret/Charlestown	Charlestown	3,200'
Quonochontaug	Charlestown/Westerly	2,800'

Winnapaug/Brightman	Westerly	2,800'
Little Maschaug	Westerly	250'
Maschaug	Westerly	300'
Great Salt	Block Island	1,800'
Trim	Block Island	850'
Harbor	Block Island	1,000'

"Codend" means the terminal section of a trawl net in which captured fish may accumulate, and is further defined as the last 45 rows of meshes in the terminal section of the net.

"Colregs demarcation line" means the lines of demarcation, as defined on National Oceanic and Atmospheric Administration chart #13221, delineating those waters upon which mariners must comply with the international regulations for preventing collisions at sea, and those waters upon which mariners must comply with the inland navigation rules. For Point Judith the "Port" is to be all waters inside of and north of the southern end of the riprap wall at Salty Brine State Beach so-called. The demarcation lines for Block Island are as follows: the area enclosed by the breakwaters at Old Harbor, and the entirety of Great Salt Pond so called.

"Commercial fisherman/fishermen" means a person(s) who catches, harvests, or takes finfish, crustaceans, or shellfish from the marine waters for sale (R.I. Gen. Laws § 20-2.1-3).

"Commercial fishing" means to take, harvest, hold, transport, or off-load marine species for sale or intended sale (R.I. Gen. Laws § 20-1-3).

"Commercial fishing vessel" means any vessel, boat or craft employed in the harvesting of marine species commercially, which shall first be declared with the Department.

"Conch pot" means any pot designed or adapted principally for the catching or taking of conchs.

"Conditionally approved waters" means shellfish grounds underlying waters examined and found fit for the taking of shellfish for human consumption on an intermittent basis, declared by the Director as conditionally approved waters

pursuant to R.I. Gen. Laws §§ 20-8.1-3 and 20-8.1-4. Such classification may be subject to change as water quality conditions dictate (R.I. Gen. Laws § 20-8.1-1).

"Constantly tended" means that a person setting a net shall remain within one hundred (100) feet of the net at all times.

"Container" means any bag, sack, tote, or other receptacle that contains shellfish to be held or transported.

"Control date" means a cutoff date for potential use in establishing eligibility criteria for future access to a fishery.

"Crab pot" means any pot designed or adapted principally for the catching or taking of crabs.

"Crew" means a person, aged sixteen (16) or older, employed for purposes of assisting in the operation of a commercial fishing vessel and its gear by another person licensed to fish commercially pursuant to the Commercial and Recreational Saltwater Fishing Licensing Regulations, Part 2 of this Subchapter.

"Cultured crops" means aquatic or marine animals or plants that are in the location, water column or artificial conditions specified in a valid aquaculture permit; or that have been taken by the holder of such permit from the location, water column or artificial conditions specified in such permit; or that have been produced by aquaculture methods outside the state and have not been commingled with wild stocks that are in or have been removed from the waters of the state. Appropriate bills of sale, bills of lading and proper tags and all other applicable state and federal laws and regulations shall be prima facie evidence of the origin of cultured crops inside or outside the state.

"Day" means a calendar day, or the 24-hour period of time beginning at 12:00AM and ending at 11:59PM.

"Dealer" means a person licensed to barter or trade in marine species.

"Designated temperature control area" means an area designated by the Department in which aquaculturists must comply with more stringent temperature controls for harvested shellfish. These areas have been determined to be Winnapaug Pond, Quonochontaug Pond, Ninigret Pond, Potter Pond, Point Judith Pond, Island Park Cove (Spectacle Cove), Hog Island Cove and Great Salt Pond.

"Director" means the Director of the Department of Environmental Management or his or her duly appointed agents.

"Discards" means marine species that are discarded overboard by fishers because their possession is prohibited by regulations or for economic reasons.

"Disposition" means the intended use or fate of landed marine species after leaving the dealer premises (e.g., food, or bait).

"Dredge" means a mechanical device that is towed behind a fishing vessel and whose purpose is to collect shellfish from the sea floor.

"Drift gillnet" means a floating gillnet that is floating unattached to the ocean bottom and not anchored, secured, or weighted to the ocean bottom.

"Dual federal permit/state license holder" means a person who holds both a federal limited access lobster permit and a State of RI commercial fishing license endorsed for American lobster.

"Eel trap/pot" means any pot or trap designed or adapted principally for the catching or taking of American eels.

"Endorsement" means a notation on a license that indicates the right to harvest a marine species or group of similar species, the right to utilize a particular type of gear or harvesting method, or the right to sell a particular marine species or group of similar species directly to consumers at dockside, in accordance with applicable harvest and/or gear restrictions.

"Endorsement category" means a marine species or group of similar species that may be legally harvested by a fisher whose license allows the taking of those species; or a gear type or harvesting method that may be legally utilized by a fisher whose license is properly endorsed.

"Exclusive economic zone" or "EEZ" means those waters three (3) to two hundred (200) miles (five to 322 kilometers) offshore which are under the direct jurisdiction of the federal government.

"Exit/entry ratio" means the number of restricted license endorsements made available for each endorsement surrendered to the Department, on an annual basis.

"Family member" means a spouse, mother, father, brother, sister, child or grandchild of a licensed fisher. Spouse shall include a person who is currently a party to a marriage that was legally recognized in the state or territory in which the marriage was solemnized.

"February 28" means the twenty-eighth (28th) day in the month of February or the next business day if February 28 falls on a Saturday or Sunday or holiday for the purpose of application submittals and renewal deadlines.

"Fishery" means one or more stocks of marine species which can be treated as a unit for purposes of conservation and management and which are identified on the basis of geographic, scientific, technical, recreational, and economic characteristics; and any fishing for such stocks.

"Fishery performance" means properly documented commercial lobster fishing activity; namely pounds landed and traps fished in LCMA 2 during the applicable qualifying period.

"Fishery sector" means and comprises crustaceans, finfish, shellfish, as defined in this section, each of which shall singularly be considered a fishery sector (R.I. Gen. Laws § 20-2.1-3).

"Floating fish trap" means a floating trap, weir, pounds net, or any equivalent contrivance set on, in or anchored to the bottom or shore, used for the purpose of catching fish (R.I. Gen. Laws § 20-5-1).

"Fork length" means the straight linear distance from the tip of the snout to the fork of the tail.

"Fyke net" means a conical shaped net supported by hoops, which also utilizes a leader to direct fish to the net.

"Gear" means any device or mechanism other than a vessel employed to catch marine species.

"Gill net" means a net used to catch fish by means of meshing or entanglement.

"Grace period" means sixty (60) calendar days commencing on the day immediately following the application deadline, as defined herein. The grace period is applicable only to renewals of licenses from the immediately preceding year.

"Grade" means the landing condition of each marine species (e.g., whole, gutted).

"Harbor of refuge breakwater" means the three sections of breakwater off of Pt. Judith.

"Harvest" means the act of removing a marine species with the intention of not returning it to the water.

"Hinge width" means the distance between the convex apex of the right shell and the convex apex of the left shell.

"Incapacity" means death of, or injury that renders an active license holder unable to fish for a period in excess of fourteen (14) days either as a result of the physical loss of function or impairment of a body part or parts, or debilitating pain.

"Initial LCMA 2 LTA" means the initial (maximum) number of lobster traps authorized in 2007 to be fished by an individual permit or license holder in LCMA 2.

"Land" or "landing" means to offload marine species harvested within or outside of Rhode Island waters for sale or intended sale, or to secure a vessel with marine species on board to a shoreside facility where the marine species may be offloaded for sale or intended sale (R.I. Gen. Laws § 20-1-3).

"LCMA 2 lobster trap allocation" or "LTA" means the maximum number of lobster traps authorized to be fished by an individual permit or license holder in LCMA 2.

"Licensed captain" means a person who holds or held a valid commercial fishing license issued by the Department.

"License year" means January 1 of any given year through December 31 of the same year.

"Lobster pot" means any pot designed or adapted principally for the catching or taking of lobsters or Jonah Crab.

"Lottery" means any of a variety of procedures used to determine priority in the issuance of new licenses or permits in cases where only a limited number of new licenses are available; such procedures having the common characteristics of being verifiably blind, random, fair and equitable.

"LTA transfer" means a change in ownership of a partial or entire Department or NOAA Fisheries-issued LTA by a person.

"LTA transferor" means the license or permit holder from whom an LTA transfer is made.

"LTA transferee" means the person or fishing vessel to whom/which an LTA transfer is made.

"Marine species" means any animal species found in the marine waters of Rhode Island, including but not limited to finfish, shellfish, crustaceans, and squid.

"Marine waters of Rhode Island" means all tidal and territorial waters of the state out to three (3) nautical miles from the coastline (R.I. Gen. Laws § 20-2.2-3).

"Material incapacitation" means a significant and verifiable event, involving either a medical condition or military service that reasonably prevented the license holder from meeting the actively fishing standard during the two calendar years preceding the sale of the license holder's vessel and gear. A short-term illness or injury, which cannot be reasonably construed to have prevented the license holder from meeting the actively fishing standard during the two-year period, does not constitute a material incapacitation.

"Mechanical power" means any source of energy or power other than exclusively human power.

"Mechanical refrigeration" means storage in a container that is approved by the Rhode Island Department of Health and capable of cooling to, and maintaining, an ambient temperature of 45°F or less.

"Medical hardship" means a significant medical condition that prevents a license holder from meeting licensing application requirements.

"Shoreward" means that point or end of any net which is closest/nearest the coast or the closest coastal outcropping.

"Netting" means a meshed fabric which exceeds eight (8) feet in length or width including, but not be limited to seines, weirs, fyke nets, otter trawls, and gill nets.

"Non-resident" means a person who does not present proof of Rhode Island residency.

"Non-resident landowner" means a non-resident citizen of the United States and owner of real estate in Rhode Island as evidenced by deed filed in the Recorder of Deeds office in a Rhode Island town or city hall (R.I. Gen. Laws § 20-1-3).

"Obstructing the free passage of fish" means the blocking of a stream, river, or pond so as to impede the passage of anadromous and/or catadromous fish, e.g., shad, alewife, and the American eel.

"Offload" means to begin to remove, to remove, to pass over the rail, or otherwise take away fish from any vessel.

"Open to the sea" means a coastal salt pond will be considered open to the sea if any flow of water connects coastal salt pond with the sea.

"Original lobster trap tags" means those trap tags available for purchase to a RI commercial license holder or a Federal Limited Access Lobster Permit holder based on their lobster trap allocation, including an additional 10% over-allotment to allow for routine trap or tag losses.

"Overfishing" or "Overfished" means a rate or level of fishing mortality that jeopardizes the capacity of a fishery to produce the maximum sustainable yield on a continuing basis.

"Party or Charter vessel" means any vessel that carries passengers for hire to engage in fishing.

"Peck" means one fourth (1/4) of a bushel (R.I. Gen. Laws § 20-1-3).

"Permanently disabled" means a person who is 100% permanently disabled in accordance with R.I. Gen. Laws §§ 20-2-31 and 20-2.2-3.

"Person" means an individual, corporation, partnership, co-partnership, association, private or Municipal Corporation, or other legal entity firm (R.I. Gen. Laws § 20-1-3).

"Place of business" means a building or office located in the State of Rhode Island where a licensed fish dealer maintains records of sales and purchases which are available for inspection by the Department during normal business hours.

"Polluted area" means shellfish grounds underlying waters examined and found to be unfit for the taking of shellfish for human consumption declared by the Director as polluted areas pursuant to R.I. Gen. Laws §§ 20-8.1-3 and 20-8.1-4. For the purposes of any criminal or civil proceeding instituted under this chapter, a declaration by the Director shall be prima facie evidence of a polluted area (R.I. Gen. Laws § 20-8.1-1).

"Port" means any town or city with a harbor and docking facilities where vessels can land.

"Possession" means the exercise of dominion or control over the resource commencing at the time at which a decision is made not to return the resource to the immediate vicinity from which it was taken. The decision must be made at the first practical opportunity.

"Possession limit" means the maximum quantity of marine species that may be possessed by a vessel or person per specified period of time (i.e., day or week) regardless of the means by which the marine species may have been taken.

"Pot" or "Trap" means any stationary bottom-fishing contrivance or device made of wood, wire mesh, or plastic mesh, fished individually or linked by a common line and generally baited; used to catch finfish, crabs, conchs, or lobsters that enter through a conical or rectangular opening where escape is difficult.

"Power hauling" means the raising or moving of fishing implements including dredges, rakes, tongs, or other apparatus used to harvest marine organisms from the waters of the state or the underlying sediment.

"Qualifying period" means the three-year period from January 1, 2001 through December 31, 2003. For persons meeting the standards governing material incapacitation, the qualifying period means the entire two-year period from January 1, 1999 through December 31, 2000.

"Quota" means the maximum weight or number of marine species which can legally be landed within a stated time period.

"Resident" means a person who has had his or her actual place of residence and has lived in the State of Rhode Island for a continuous period of not less than six (6) months. Proof of residence may include a Rhode Island driver's license, voter

registration card or a notarized statement from a City or Town Clerk (R.I. Gen. Laws § 20-1-3).

"Routine trap tag loss" means the loss of lobster trap tags that does not exceed the 10% over-allotment trap tags issued for routine loss.

"Season" means a period of time established by regulation during which management rules specific to that period are in effect.

"Seine" means any net used to catch fish by encirclement or herding that hangs vertically in the water with its bottom edge held down by weights and its top edge buoyed by floats.

"Shading" means to shelter by intercepting the direct rays of the sun to protect the shellfish from heat. Shading may be accomplished by any means that effectively protects the harvested shellfish from direct sunlight and prevents excessive heat build-up in the shaded area.

"Shellfish" means any molluscan species growing in Rhode Island tidal waters, including, but not limited to, bay quahaug, ocean quahaug, blue mussel, oyster, soft shell clam, bay scallop, and surf clam.

"Shellfish grounds" means all land underlying waters within the rise and fall of the tide and the marine limits of the jurisdiction of the State (R.I. Gen. Laws § 20-8.1-1).

"Shellfish harvest tagging area" means the marine waters of the state where shellfish are harvested (refer to <http://www.dem.ri.gov/programs/bnatres/fishwild/shelltag.htm>).

"Sink gillnet" means any bottom tending gillnet that is designed to be or is fished on or near the bottom of the water column by means of a weight line or enough weights and/or anchors that the bottom of the gillnet sinks to, on, or near the ocean bottom.

"Shoredigging" means the taking of shellfish from shallow areas or the intertidal zone of the waters of the State without the use of a boat or SCUBA gear and when body contact is made with the bottom substrate.

"Take" or "taking" means the process and each of the activities in that process undertaken to remove the resource from its natural habitat until the time at which possession begins.

"Temperature control" means the use of ice or mechanical refrigeration, which is capable of lowering the temperature of the shell stock and maintaining it at 50°F or less.

"Tongs" means any shellfishing implement constructed with heads attached to stales (handles) and pinned at a pivot point to allow the opening and closing of the basket mouth formed by the two.

"Total length" means the straight linear distance from the tip of the snout to the end of the tail of a finfish species. All finfish species minimum size are measured as total length, except for coastal sharks, in which minimum size is measured by fork length.

"Transaction records" means invoices or similar records of the purchase marine species by a licensed dealer, which identify the boat, license holder, the Rhode Island dealer name, and the date sold, species landed, pounds landed, name of the seller, and license number of the seller.

"Trawl devices" means any type of fishing apparatus drawn behind a vessel which consists of otter doors and/or ground cables, ropes, and/or netting, including, but not be limited to beam trawls, otter trawls, Scottish seines, and pair trawls.

"Trip" means a fishing voyage beginning with the departure from any port and terminating with the return to any port regardless of the duration of time.

"Trip level data" means data reported to the detail of each individual fishing trip.

"V-notched female American lobster" means a V-notched female lobster means any female American lobster with a V-notch mark, or the remnant of a healed V-notch mark in the end part of the right tail flipper adjacent to the middle tail flipper, or any lobster which is mutilated in such a manner which could hide, obscure, or obliterate such a mark, including a missing right tail flipper. A V-notch shall be a notch or the remnant of a healed notch, with or without setal hairs, at least 1/8 inch (1/8") in depth. Any licensed/permitted commercial fisherman required or authorized to mark lobsters with a v-notch mark in LCMA 2 shall make a v-notch mark by means of a sharp-blade instrument, at least 1/4 inch (1/4") and not greater than 1/2 inch (1/2") in depth and tapering to a sharp point. The flipper to the right of the center flipper will be examined when the underside of the lobster is down and its tail is toward the person making the determination.

"Vessel" means every description of watercraft, other than a seaplane on the water, used, or capable of being used as a means of transportation on water.

"Water-assisted harvest" means the attempt to collect aquatic species by using a water pump or pressurized water, or device designed to disturb the substrate, create a vacuum effect or sediment displacement.

"Week" means a calendar week, or the period beginning on Sunday at 12:00AM and ending on 11:59PM of the immediately following Saturday.

"Weir" means a barrier of interwoven twine, branches, or other material used to catch fish.

"Wet storage" means the temporary storage of shellfish (from growing areas) in the approved classification or in the open status of the conditional approved classification in containers or floats in natural bodies of water or in tanks containing natural or synthetic sea-water; this includes flow-through systems.

"Wild shellfish stock" means natural shellfish resources that set and grow within the waters of the State and are not cultured in any way; however, cultured shellfish crops that are stocked in tidal waters of the State that are not within an aquaculture lease or facility are considered wild stock shellfish.

"Wild stock" means natural resources, including aquatic or marine animals or plants, which grow within the waters of the state, and are not cultured in any way. Any shellfish that have settled naturally within an aquaculture facility are considered wild stock.

## **1.8 Commonly Used Acronyms**

"ACCSP" means Atlantic Coastal Cooperative Statistics Program.

"CRMC" means Rhode Island Coastal Resources Management Council.

"DEM" or "Department" means Rhode Island Department of Environmental Management.

"Division" means the Division of Marine Fisheries of the Department of Environmental Management.

"DOH" means Rhode Island Department of Health.

"LCMA" means Lobster Conservation Management Area.

"LCMA 2" means Lobster Conservation Management Area 2, as delineated in Amendment 3, Appendix 1 to the Interstate Fishery Management Plan for American Lobster, adopted by the ASMFC in December 1997.

"LTA" means Lobster trap allocation, either issued by the Department or NOAA Fisheries.

"NOAA" means National Oceanic and Atmospheric Administration.

"RIMFC" means the Rhode Island Marine Fisheries Council. (R.I. Gen. Laws § 20-10-2)

"SAFIS" means Standard Atlantic Fisheries Information System.

"TAL" means Total allowable landings.

## 1.9 Common Species

"Alewife" means *Alosa pseudoharengus*, alewives.

"American eel" means *Anguilla rostrata*.

"American lobster" means *Homarus americanus*. (R.I. Gen. Laws § 20-1-3)

"American plaice" means *Hippoglossoides platessoides*, Dab.

"Atlantic angel shark" means *Squatina dumeril*.

"Atlantic cod" means *Gadus morhua*, cod, codfish.

"Atlantic menhaden" means *Brevoortia tyrannus*, pogies, menhaden, peanut bunker.

"Atlantic herring" means *Clupea harengus*.

"Atlantic rock crab" means *Cancer irroratus*, sand crab.

"Atlantic horseshoe crab" means *Limulus polyphemus*.

"Barndoor skate" means *Dipturus laevis*.

"Basking shark" means *Cetorhinus maximus*.

"Bay quahaug" means *Mercenaria mercenaria*, hard clam, quahaug, quahog. (R.I. Gen. Laws § 20-1-3)

"Bay scallop" means *Argopecten irradians*. (R.I. Gen. Laws § 20-1-3)

"Blacknose shark" means *Carcharhinus acronotus*.

"Black sea bass" means *Centropristes striatus*.

"Blacktip shark" means *Carcharhinus limbatus*.

"Blueback herring" means *Alosa aestivalis*.

"Blue crab" means *Callinectes sapidus*. (R.I. Gen. Laws § 20-1-3)

"Bluefish means" *Pomatomus saltatrix*, skipjack.

"Blue mussel" means *Mytilus edulis*. (R.I. Gen. Laws § 20-1-3)

"Blue shark" means *Prionace glauca*.

"Bigeye sandtiger shark" means *Odontaspis noronhai*.

"Bigeye sixgill shark" means *Hexanchus nakamurai*.

"Bigeye thresher" shark means *Alopias superciliosus*.

"Bignose shark" means *Carcharhinus altimus*.

"Bluntnose sixgill shark" means *Hexanchus griseus*.

"Bonnethead shark" means *Sphyrna tiburo*.

"Bull shark" means *Carcharhinus leucas*.

"Caribbean sharpnose shark" means *Rhizoprionodon porosus*.

"Common thresher" shark means *Alopias vulpinus*.

"Conch" means Channeled Whelk - *Busycotypus canaliculatus*; or Knobbed Whelk - *Busycon carica*. (R.I. Gen. Laws § 20-1-3)

"Dusky shark" means *Carcharhinus obscurus*.

"Finetooth shark" means *Carcharhinus isodon*.

"Florida smoothhound shark" means *Mustelis norrisi*.

"Galapagos shark" means *Carcharhinus galapagensis*.

"Great hammerhead shark" means *Sphyrna mokarran*.

"Green crab" means *Carcinus maenas*. (R.I. Gen. Laws § 20-1-3)

"Haddock" means *Melanogrammus aeglefinus*.

"Jonah crab" means *Cancer borealis*, Rock crab.

"Monkfish" means *Lophius americanus*, goosefish.

"Narrowtooth shark" means *Carcharhinus brachyurus*.

"Night shark" means *Carcharhinus signatus*.

"Ocean quahog" means *Arctica islandica*. (R.I. Gen. Laws § 20-1-3)

"Nurse shark" means *Ginglymostoma cirratum*.

"Ocean quahog" means *Arctica islandica*.

"Oyster" means American oyster, *Crassostrea virginica* or European oyster, *Ostrea edulis*. (R.I. Gen. Laws § 20-1-3)

"Pollock" means *Pollachius virens*.

"Porbeagle shark" means *Lamna nasus*.

"Reef shark" means *Carcharhinus perezii*.

"Sand tiger shark" means *Carcharias taurus*.

"Scalloped hammerhead shark" means *Sphyrna lewini*.

"Scup" means *Stenotomus chrysops*, porgie.

"Sea scallop" means *Placopecten magellanicus*. (R.I. Gen. Laws § 20-1-3)

"Sharpnose sevengill shark" means *Heptranchias perlo*.

"Shortfin mako shark" means *Isurus oxyrinchus*.

"Silky shark" means *Carcharhinus falciformis*.

"Smalltail shark" means *Carcharhinus porosus*.

"Smooth Dogfish" means *Mustelus canis*, smoothhound shark.

"Smooth hammerhead shark" means *Sphyrna zygaena*.

"Soft-shelled clam" means *Mya arenaria*, steamer. (R.I. Gen. Laws § 20-1-3)

"Spinner shark" means *Carcharhinus brevipinna*.

"Spiny dogfish" means *Squalus acanthias*.

"Striped bass" means *Morone saxatilis*, rockfish, striper.

"Summer flounder" means *Paralichthys dentatus*, fluke.

"Surf clam" means *Spisula solidissima*, sea clam.

"Tautog" means *Tautoga onitis*, blackfish.

"Thorny skate" means *Amblyraja radiata*.

"Tiger shark" means *Galeocerdo cuvier*.

"Whale shark" means *Rhincodon typus*.

"White shark" means *Archarodon carcharias*.

"Winter flounder" means *Pleuronectes americanus*.

"Witch flounder" means *Glyptocephalus cynoglossus*, gray sole.

"Yellowtail flounder" means *Limanda ferruginea*.

**RHODE ISLAND GOVERNMENT REGISTER  
PUBLIC NOTICE OF PROPOSED RULEMAKING**

**DEPARTMENT OF ENVIRONMENTAL MANAGEMENT**

**Title of Rule:** Finfish (250-RICR-90-00-3)

**Rule Identifier:** 250-RICR-90-00-3

**Rulemaking Action:** Proposed Amendment

**Important Dates:**

Date of Public Notice: 10/30/2019

Hearing Date: 11/12/2019

End of Public Comment: 11/29/2019

**Authority for this Rulemaking:**

R.I. Gen. Laws Title 20, R.I. Gen. Laws Chapters 42-17.1, 42-17.6, and 42-17.7, and in accordance with R.I. Gen. Laws Chapter 42-35-18(b)(5), Administrative Procedures Act, as amended

**Summary of Rulemaking Action:**

1. 2020 Commercial Black sea bass management (section 3.7.2(A) and (B)): These sections are open for comment: No specific amendments are proposed.  
Considerations:

- 2020 RI commercial quota expected to increase from 377k lbs to 613k lbs.
- Increase May 1 - June 30 sub-period allocation percentage by decreasing allocation percentage(s) from other sub-period(s).
- Remove the closed sub-period from August 1 – September 14 with allocation adjustments to other sub-periods.
- Increase Sept. 15 – Oct. 31 sub-period allocation percentage by decreasing allocation percentage(s) from other sub-period(s).
- Increase Nov. 1 – Dec. 31 sub-period allocation percentage by decreasing allocation percentage(s) from other sub-period(s).

2. 2020 commercial Scup management (section 3.8.2(A)and(B)): These sections are open for public comment. No specific amendments are proposed.

3. 2020 commercial Summer flounder management (section 3.10.2):

- Considerations: 2020 RI commercial quota expected to increase from 1.72 to 1.81 m lbs.

- Amendment proposed as follows:

- o Increase the starting possession limit during the May 1 – September 15 sub-period from 50 to 100 pounds per vessel per day.

- o Open the Summer Flounder Aggregate Landing Program on the Sunday of the first full week in January instead of the Sunday of the first full week in February and amend starting/opening possession limit for the Summer Flounder Aggregate Landing Program from 1,500 lbs/bi-week to 2,000 lbs/bi-week.

4. **2020 commercial Bluefish management (section 3.18.2):**

- Considerations: 2020 RI commercial quota 188,637 lbs., similar to 2019 initial quota. However, a recreational to commercial transfer will not occur in 2020 because the recreational fishery is likely to catch the full rec. harvest level.

- Amendment proposed as follows:

- o Increase minimum size from 12 to 18 inches;

- o Decrease starting possession limit during the May 1 – November sub-period from 8,000 to 6,000 pounds per vessel per day.

5. **2020 commercial menhaden management (section 3.22.2):** This section is open for public comment. No specific amendments are proposed.

6. **Ocean pout (proposed new section 3.32):** Prohibit harvest, landing, or possession in state waters.

7. **Atlantic wolffish (proposed new section 3.33):** Prohibit harvest, landing, or possession in state waters.

**Additional Information and Comments:**

All interested parties are invited to request additional information or submit written or oral comments concerning the proposed amendment until November 29, 2019 by contacting the appropriate party at the address listed below:

Peter Duhamel  
Department of Environmental Management  
3 Fort Wetherill Road  
Jamestown, RI 02835  
peter.duhamel@dem.ri.gov

**Public Hearing:**

A public hearing, in accordance with R.I. Gen. Laws § 42-35-2.8, to consider the proposed amendment shall be held on November 12, 2019 at 6:00 pm at URI Bay Campus, Corless Auditorium, South Ferry Road, Narragansett, RI 02882 at which time and place all persons interested therein will be heard. The seating capacity of the room will be enforced and therefore the number of persons participating in the hearing may be limited at any given time by the hearing officer, in order to comply with safety and fire codes.

The place of the public hearing is accessible to individuals who are handicapped. If communication assistance (readers/interpreters/captioners) is needed, or any other accommodation to ensure equal participation, please call 401-423-1927 or RI Relay 711 at least three (3) business days prior to the meeting so arrangements can be made to provide such assistance at no cost to the person requesting.

**Regulatory Analysis Summary and Supporting Documentation:**

In the development of the proposed amendment consideration was given to: (1) alternative approaches; (2) overlap or duplication with other statutory and regulatory provisions; and (3) significant economic impact on small business. No alternative approach, duplication, or overlap was identified based upon available information.

For full regulatory analysis or supporting documentation see agency contact person above.

**Public Hearing**  
**November 12, 2019**

**Proposed/annotated amendments**

Note: Proposed new language is identified as red, underline; proposed language to be deleted is identified as ~~red-stricken~~.

**250-RICR-90-00-3**

**TITLE 250 – DEPARTMENT OF ENVIRONMENTAL MANAGEMENT**

**CHAPTER 90 – MARINE FISHERIES**

**SUBCHAPTER 00 – N/A**

**PART 3 – Finfish**

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### **3.1 Purpose**

The purpose of these Rules and Regulations is to manage the marine resources of Rhode Island.

### **3.2 Authority**

These rules and regulations are promulgated pursuant to R.I. Gen. Laws Title 20, R.I. Gen. Laws Chapters 42-17.1, 42-17.6, and 42-17.7, and in accordance with R.I. Gen. Laws § 42-35-18(b)(5), Administrative Procedures Act, as amended.

### **3.3 Application**

The terms and provisions of these Rules and Regulations shall be liberally construed to permit the Department to effectuate the purposes of state law, goals, and policies.

### **3.4 Definitions**

See Rhode Island Marine Fisheries Regulations, Part 1 of this Subchapter.

### **3.5 Severability**

If any provision of these Rules and Regulations, or the application thereof to any person or circumstances, is held invalid by a court of competent jurisdiction, the validity of the remainder of the Rules and Regulations shall not be affected thereby.

### **3.6 Superseded Rules and Regulations**

On the effective date of these Rules and Regulations, all previous Rules and Regulations, and any policies regarding the administration and enforcement of these regulations shall be superseded. However, any enforcement action taken by, or application submitted to, the Department prior to the effective date of these Rules and Regulations shall be governed by the Rules and Regulations in effect at the time the enforcement action was taken, or application filed.

### **3.7 Black Sea Bass**

#### **3.7.1 Recreational**

- A. Minimum size: Fifteen inches (15"). Minimum size measurement for black sea bass does not include the tendril located on the caudal (tail) fin.
- B. Seasons and possession limits:
  - 1. January 1 through June 23: Closed.

2. June 24 through August 31: Three (3) fish per person per calendar day.
3. September 1 through December 31: Seven (7) fish per person per calendar day.

### **3.7.2 Commercial**

- A. Minimum size: Eleven (11) inches.
- B. Seasons, allocations, and possession limits:
  1. January 1 through April 30:
    - a. Allocation: Twenty-five percent (25%) of the quota.
    - b. Possession limit: Five hundred (500) pounds per vessel per week.
  2. May 1 through June 30:
    - a. Allocation: Twenty-five percent (25%) of the quota.
    - b. Possession limit: Fifty (50) pounds per vessel per calendar day.
  3. July 1 through July 31:
    - a. Allocation: Nineteen and a half percent (19.5%) of the quota.
    - b. Possession limit: Fifty (50) pounds per vessel per calendar day.
  4. August 1 through September 14: Closed.
  5. September 15 through October 31:
    - a. Allocation: Nineteen and a half percent (19.5%) of the quota.
    - b. Possession limit: Fifty (50) pounds per vessel per calendar day.
  6. November 1 through December 31:
    - a. Allocation: Eleven percent (11%) of the quota.
    - b. Possession limit: Fifty (50) pounds per vessel per calendar day.
- C. Black sea bass pot construction
  1. All black sea bass pots must be constructed with two escape openings in the parlor portion of the pot. Openings may be circular, rectangular, or square, and must be a minimum of 2.5" diameter if circular, 1- 3/8" X 5-3/4" if rectangular, 2" X 2" if square. Escape vents must be attached with

biodegradable fasteners which allow vents or panels to fall away from the trap after loss.

2. The hinges or fasteners of one panel or door must be made of one of the following degradable materials:
  - a. Un-treated hemp, jute, or cotton string 3/16" (4.8mm) or smaller;
  - b. Magnesium alloy, timed float releases (pop-up devices) or similar magnesium alloy fasteners;
  - c. Un-galvanized or uncoated iron wire of .094" (2.4mm) or smaller; or
  - d. If "bungee" cord or other elasticized material is used to fasten the top, it must be secured to the trap with a degradable hog ring.

### **3.8 Scup**

#### **3.8.1 Recreational**

- A. Minimum size: Nine inches (9").
- B. Season: January 1 through December 31.
- C. Possession limit: Thirty (30) fish per person per calendar day.
- D. Special shore angling sites:
  1. Locations: India Point Park, Providence; Conimicut Park, Warwick; Rocky Point, Warwick; Stone Bridge, Tiverton; East and West Walls (Harbor of Refuge), Narragansett; Fort Wetherill, Jamestown; and Fort Adams, Newport:
  2. Minimum size: Eight inches (8").
  3. Season: January 1 through December 31.
  4. Possession limit: Thirty (30) fish per person per calendar day.
- E. Licensed Party and Charter vessels seasons and possession limit:
  1. January 1 through August 31: Thirty (30) fish per person per calendar day.
  2. September 1 through October 31: Fifty (50) fish per person per calendar day.
  3. November 1 through December 31: Thirty (30) fish per person per calendar day.

### 3.8.2 Commercial

- A. Minimum size: Nine (9) inches.
- B. Seasons, quotas and possession limit:
  - 1. January 1 through April 30 (federal Winter I) possession limit: 50,000 pounds per vessel per calendar day, decreasing to 1,000 pounds per vessel per calendar day once 80% of the federal Winter I coastwide Scup quota has been harvested as determined by NOAA Fisheries.
  - 2. May 1 through September 30: The State quota for this sub-period will be divided as follows:
    - a. General Category (gear types other than floating fish traps): Forty percent (40%).
      - (1) Possession limit: 10,000 pounds per vessel per calendar week. When the Summer sub-period quota has been harvested as determined by the DEM, the fishery will close.
    - b. Floating fish trap: Sixty percent (60%).
      - (1) During years in which the federal Winter I coastwide Scup quota is exhausted prior to April 15, the floating fish trap quota will be available on April 15. During years in which the federal Winter I coastwide Scup quota is not exhausted prior to April 15, the floating fish trap quota will be available on May 1.
      - (2) If the DEM estimates that the floating fish trap sector will not fully utilize its scup allocation prior to the end of the Summer-Fall sub-period, beginning on June 15, the DEM may transfer the floating fish trap sector allocation to the general category sector. DEM will consult with the floating fish trap operators or their designee prior to enacting any allocation transfer, and will maintain written correspondence in the form of a letter on file as proof of said consultation.
      - (3) If the DEM estimates that the floating fish trap sector has a reasonable likelihood of utilizing its quota prior to the end of the sub-period, a portion of any unused allocation that was transferred to the general category sector may be transferred back to the floating fish trap sector. Any quota that was transferred from the general category sector to the floating fish trap sector shall not exceed the amount that may have been transferred from the floating fish trap sector to the general category sector.

- (4) Reporting: Floating fish trap operators shall report landings of scup to SAFIS every Monday, Wednesday, and Friday, of every week that the trap is in operation. If there is non-compliance with this reporting requirement, the Floating Fish Trap operators will be notified and will default to the following program:
- (AA) April 15 through September 30: During those years in which the federal Winter I coastwide scup quota is exhausted prior to April 15, the floating fish trap quota will be available on April 15. The possession limit will be 25,000 pounds per floating fish trap per calendar day. Once ninety percent (90%) of the sub-period allocation is projected to be harvested, the possession limit will be 5,000 pounds per fish trap licensee per calendar day until one hundred percent (100%) of the quota has been harvested.
  - (BB) May 1 through September 30: During those years in which the federal Winter I coastwide scup quota is not exhausted prior to April 15, the floating fish trap quota will be available on May 1. The possession limit will be 25,000 pounds per floating fish operator per calendar day. Once ninety percent (90%) of the sub-period allocation is projected to be harvested, the possession limit will be 5,000 pounds per fish trap licensee per calendar day until one hundred percent (100%) of the quota has been harvested.
  - (CC) Floating Fish trap operator: For purposes of this section, a fish trap operator shall refer to a resident person or resident corporation currently issued a permit pursuant to R.I. Gen. Laws § 20-5-2. The maximum possession limit per floating fish trap licensee shall be the amount set forth above regardless of the number of authorized trap locations, the number of vessels or the number of licensed fishermen who may be working for or may enter into contract with the floating fish trap operator. While engaged in the operation of a fish trap, any licensed fisherman that may be working for or may enter into contract with the floating fish trap operator waives any individual right to possess scup pursuant to a possession limit set out in these regulations.
3. October 1 – December 31 (federal Winter II): 2,000 pounds per vessel per calendar day, decreasing to 500 pounds per vessel per calendar day once

70% of the federal Winter II coastwide Scup quota has been harvested as determined by NOAA Fisheries.

- C. Trawl vessel gear restrictions - minimum mesh size: Owners or operators of otter trawl vessels possessing greater than one-thousand (1,000) pounds of scup from October 1 through April 14; or greater than two-thousand (2,000) pounds of scup from April 15 through June 15; or greater than two hundred (200) pounds of scup from June 16 through September 30, may only fish with nets that have a minimum mesh size of five (5) inches diamond (inside measure) or square mesh with a minimum length of seventy-five (75) meshes from the terminus of the net. For nets with less than seventy-five (75) mesh cod ends, the entire net will be five (5) inch minimum size diamond or square mesh.
- D. Scup pots:
  - 1. Pot limits: Each person utilizing pots in the scup fishery shall be permitted to fish up to one hundred fifty (150) pots regardless of the number of licenses on board the vessel.
  - 2. Pot construction - escape vents: All scup pots must be constructed with escape openings. Openings may be circular, rectangular, or square, and must be a minimum of 3.1" diameter, 2-1/4" X 5-3/4" if rectangular or may be constructed of 2-1/4" X 2-1/4" wire mesh. Escape vents must be attached with biodegradable fasteners which allow vents or panels to fall away from the trap after loss.
  - 3. The hinges or fasteners of one panel or door must be made of one of the following degradable materials:
    - a. Un-treated hemp, jute, or cotton string 3/16" (4.8mm) or smaller;
    - b. Magnesium alloy, timed float releases (pop-up devices) or similar magnesium alloy fasteners;
    - c. Un-galvanized or uncoated iron wire of .094" (2.4mm) or smaller; or
    - d. If "bungee" cord or other elasticized material is used to fasten the top, it must be secured to the trap with a degradable hog ring.

### **3.9 Striped Bass**

#### **3.9.1 Recreational**

- A. Minimum size: Twenty-eight inches (28") in total length.
- B. Season: January 1 through December 31.
- C. Possession limit: One (1) fish per person per day.

- D. Any person recreationally harvesting a striped bass thirty-four (34) inches or larger shall at the time of harvest have the right pectoral fin removed at a point as close to the body of the fish as possible

### **3.9.2 Commercial**

A. General Category:

1. Minimum size: Thirty-four (34) inches or greater in total length.
2. Allocation: Sixty-one percent (61%) of the annual Rhode Island commercial quota.
3. Seasons and possession limits
  - a. January 1 through May 19: Closed.
  - b. May 20 through June 30:
    - (1) Allocation: Seventy percent (70%) of the general category quota.
    - (2) Possession limit: Five (5) fish per person per calendar day, or if fishing from a vessel, five (5) fish per vessel per calendar day.
    - (3) The fishery will be closed in each calendar week on Friday and Saturday during this sub period. There will be no commercial possession or sale of Striped bass on these days for general category commercial fishermen.
    - (4) The sub-period will close once seventy percent (70%) of the general category quota is projected to be harvested if prior to June 30.
  - c. July 1 through December 31:
    - (1) Allocation: Thirty percent (30%) of the general category quota.
    - (2) Possession limit: Five (5) fish per person per calendar day, or if fishing from a vessel, five (5) fish per vessel per calendar day.
    - (3) The fishery will be closed in each calendar week on Friday and Saturday during this sub period. There will be no commercial possession or sale of Striped bass on these days for general category commercial fishermen.

- (4) The sub-period will close when 30% of the general category quota is projected to be harvested.
  - (5) If DEM determines that the quota will be exceeded or will not be met before the end of the fall season, DEM may adjust that catch rate accordingly on or after September 15 annually.
3. If DEM estimates that the floating fish trap sector will not fully utilize its Striped bass allocation prior to the end of the season, the DEM may transfer all or a portion of the floating fish trap sector allocation into the general category fishery. DEM will consult with the floating fish trap licensees or their designee prior to enacting any such transfer, and will maintain written correspondence of this consultation.
4. Floating fish trap allocation that has been transferred to the general category fishery in accordance with § 3.9.2(A)(3) of this Part may be transferred back to the floating fish trap fishery. Any allocation transferred back to the floating fish trap fishery shall not exceed the amount of the original transfer.

B. Floating Fish Traps:

1. Floating fish trap operators must be permitted pursuant to RIMFR "General Equipment Provisions," Part 6 of this Subchapter.
2. Allocation: During a single calendar year, the floating fish trap quota shall not be more than thirty-nine percent (39%) of the annual Rhode Island commercial quota.
3. Minimum size: Twenty-six inches (26") in total length.
4. Season: April 1 through December 31.
5. Possession limit: Unlimited. Once seventy percent (70%) of the seasonal allocation is projected to be harvested the possession limit shall be five hundred (500) pounds per floating fish trap licensee per calendar day.
6. When DEM has determined that the annual quota allocated to floating fish traps has been reached, the fishery will terminate.
7. Reporting: All floating fish trap operators shall keep daily records of striped bass landings and report landings to SAFIS every Monday, Wednesday, and Friday, of every week that the trap is in operation.
8. If the floating fish trap operators are found to be out of compliance with the reporting requirements, the operators will be notified, and default to following program:

- a. April 1 through December 31: One hundred percent (100%) of the floating fish trap quota shall be available during this sub-period. Once eighty percent (80%) of the seasonal allocation is projected to be harvested the possession limit shall be 500 pounds per floating fish trap licensee per calendar day.
- C. Gillnet prohibition for Striped bass: No person shall take or possess any striped bass while gillnetting, or while hauling a gill net.
- D. Hybrid Striped Bass Cultured Striped Bass:
  1. Aquaculture-reared striped bass or hybrid striped bass brought into Rhode Island for sale or resale, which is wholly or partially processed, except for cultured striped bass or hybrid Striped bass from a fish farm or processor which are a fully processed and packaged product whether fresh or frozen, shall have affixed to it a tag identifying it as an aquaculture product.
  2. Packages, containers, and each fish or fish product containing aquaculture products shall be tagged or labeled with a uniform series of 14-digit numbers and letters as shown in the example below:  
  
MD = State of origin  
  
123 = Permit number (producing state issued permit number)  
  
0889 = Month and year of shipment  
  
A1234 = Species ID and number of product
  3. Each fish or fish product shall have affixed to it a tag bearing the same information listed in § 3.9.2(D)(2) of this Part.
  4. The sale of this product shall be accompanied by a receipt showing:
    - a. the date of sale;
    - b. name, address, and permit number of the aquaculture facility;
    - c. numbers and species of Striped bass sold;
    - d. name of purchaser.
  5. Fish shipped in the round and filleted by the seller, shall have the tag removed and wrapped in with the fillets when sold.

6. The consignee of each subsequent sale shall retain a copy of the bill of lading or similar accountable document for 1 year, and make it available to the Department upon request.
- E. Commercial Striped Bass Tags: Each individual Striped bass shall be immediately marked with tags available from DEM. No Striped bass may be sold unless it has been properly identified with such tag. DEM may designate tagging agents as appropriate. All designated tagging agents shall keep and maintain the required forms and reports specified by DEM. All tag reports and unused tags must be returned to DEM by January 1st of the following year. Failure to return reports and unused tags may result in the tagging agent becoming ineligible to receive striped bass tags in the future.

### **3.10 Summer Flounder**

#### **3.10.1 Recreational**

- A. Minimum size: Nineteen inches (19”).
- B. Season: May 3 through December 31.
- C. Possession limit: Six (6) fish.
- D. Special shore angling sites:
  1. Special shore angling site locations: India Point Park, Providence; Conimicut Park, Warwick; Rocky Point, Warwick; Stone Bridge, Tiverton; East and West Walls (Harbor of Refuge), Narragansett; Fort Wetherill, Jamestown; and Fort Adams, Newport.
  2. Minimum size: Seventeen inches (17”). This applies to only two (2) fish of the allowed total possession limit.
  3. Season: May 3 through December 31.
  4. Possession Limit: Six (6) fish. The minimum size of two (2) of the six (6) fish may be seventeen inches (17”).

#### **3.10.2 Commercial**

- A. Minimum size: Fourteen (14) inches.
- B. Seasons, allocations, and possession limits:
  1. January 1 through April 30 (~~Winter~~):
    - a. Target allocation: 54% of the annual quota.

- b. Possession limit between January 1 and the start of the Winter sub-period of the Aggregate Landing Program, annually:
    - (1) Vessels that possess a valid RI Summer Flounder Exemption Certificate (Exemption Certificate): One hundred (100) pounds per vessel per calendar day.
    - (2) Vessels that do not possess a valid Exemption Certificate: One hundred (100) pounds per vessel per calendar day.
  - c. Possession limit during the Winter sub-period of the Aggregate Landing Program, annually:
    - (1) Vessels not permitted in the Aggregate Landing Program but which possess a valid Exemption Certificate: One hundred (100) pounds per vessel per calendar day. When 90% of the Winter sub-period quota has been harvested as determined by the DEM, the possession limit per vessel shall be one hundred (100) pounds per calendar day.
    - (2) Vessels that do not possess a valid Exemption Certificate: One hundred (100) pounds per vessel per calendar day. When 90% of the Winter sub-period quota has been harvested as determined by the DEM, the possession limit per vessel shall be one hundred (100) pounds per calendar day.
    - (3) Aggregate Landing Program: ~~One thousand five hundred (1,500)~~ Two thousand (2,000) pounds per vessel per bi-weekly period. The bi-weekly periods shall be specified in the Aggregate Landing Permit. When 90% of the Winter sub-period quota has been harvested as determined by the DEM, the Aggregate Landing Program will terminate, and the possession limit shall be one hundred (100) pounds per vessel per calendar day.
2. May 1 through September 15 (~~Summer~~):
- a. Target allocation: 35% of the annual quota.
  - b. Possession limit:
    - (1) Vessels that possess a valid Exemption Certificate: ~~Fifty (50)~~ One hundred (100) pounds per vessel per calendar day.
    - (2) Vessels that do not possess a valid Exemption Certificate: ~~Fifty (50)~~ One hundred (100) pounds per vessel per calendar day.

3. September 16 through December 31 (~~Fall~~):
  - a. Target allocation: 11% of the annual quota.
  - b. Possession limit:
    - (1) Vessels that possess a valid Exemption Certificate: One hundred (100) pounds per vessel per calendar day.
    - (2) Vessels that do not possess a valid Exemption Certificate: One hundred (100) pounds per vessel per calendar day.

C. Aggregate Landing Program:

1. Sub-periods:
  - a. Winter: Beginning on the Sunday of the first full week in ~~February~~ January through April 30 annually, or until 90% of the Winter sub-period quota has been harvested as determined by the DEM.
2. Eligibility: An applicant vessel shall be considered eligible for a permit to participate in the Aggregate Landing Program by demonstrating to the satisfaction of the DEM and the Division of Law Enforcement each of the following:
  - a. The vessel, if harvesting Summer flounder from federal waters, possesses a valid federal Summer Flounder Moratorium Permit and RI Summer Flounder Exemption Certificate (Exemption Certificate);
  - b. The vessel's operator, if harvesting exclusively in State waters, holds a valid RI commercial fishing license to harvest or land summer flounder and possesses a valid Exemption Certificate;
  - c. The vessel's operator has not been assessed a criminal or administrative penalty in the past three years for a violation of this section or has more than one marine fisheries violation.
3. Application: Application for an Aggregate Landing Program Permit shall be made on forms as prescribed by the Director.
4. Non-compliance with the provisions of these regulations or the permit agreement shall subject both the owner and the operator to revocation of enrollment and participation in the commercial fisheries for remainder of the sub-period or the subsequent sub-period. If for any reason a sub-period does not exist by regulation, the privilege of the owner(s) and operator(s) to commercially harvest fish shall be suspended for the same calendar time period as described in the current sub-period upon adjudication.

D. Rhode Island Summer Flounder Exemption Certificate:

1. Application: Applicants shall provide each of the following:
  - a. A copy of the operator's valid current Rhode Island commercial fishing license or non-resident landing license, and Federal Fluke Permit if the summer flounder is to be taken in the EEZ;
  - b. A completed notarized application;
  - c. Proof that the vessel meets the requirements set out in this section;
  - d. Provide a completed notarized waiver authorizing the Department to access records verifying that this vessel and operator meet the criteria set forth in this section; and
  - e. A copy of the vessel's U.S. Coast Guard documentation papers or state issued boat registration certificate proving ownership of the vessel.
  
2. Eligibility: DEM will issue an Exemption Certificate for a vessel if the owner of the vessel or his/her representative applies to DEM prior to January 1, 1997, for the issuance of such a certificate and demonstrates to the satisfaction of the Director that:
  - a. The operator of the vessel possesses a valid Rhode Island commercial fishing license to land Summer flounder up to the amount permitted by these regulations; and
  - b. The subject vessel meets any of the following criteria:
    - (1) The vessel was operated by a person who possessed a valid Rhode Island commercial fishing license and landed and sold in excess of one pound of summer flounder to a Rhode Island licensed dealer during the period from January 1, 1987, through December 31, 1992;
    - (2) The vessel fished exclusively in the Exclusive Economic Zone (EEZ) and landed and sold in excess of one pound of summer flounder to a licensed Rhode Island licensed dealer sometime during the period January 1, 1987, through December 31, 1992. The Department may require additional supporting documents including but not limited to the ship's logs, ice and fuel slips;
    - (3) The vessel replaces a vessel which was operated by a person who possessed a valid Rhode Island commercial fishing license, and the vessel being replaced landed and

sold in excess of one pound of summer flounder to a Rhode Island licensed dealer during the period from January 1, 1987, through December 31, 1992, and if the vessel being replaced was lost by sinking or was otherwise destroyed, the replaced vessel is required to have been owned by the applicant at the time of the loss;

- (4) The vessel replaces a vessel which fished exclusively in the EEZ and landed and sold in excess of one pound of summer flounder to a Rhode Island licensed dealer, during the period January 1, 1987, through December 31, 1992, and if the vessel being replaced was lost by sinking or was otherwise destroyed, the replaced vessel is required to have been owned by the applicant at the time of the loss.
  - (5) If the vessel is replacing a vessel that was lost by sinking or was otherwise destroyed, documentation must be presented from a licensed insurance company, U.S. Coast Guard report, or some other valid evidence of ownership to the satisfaction of the Director.
3. Transfer of an Exemption Certificate: An Exemption Certificate issued by the DEM is only valid the vessel to which it is issued. A vessel may be sold with all certificates, permits (state and federal) and history transferred together or without the certificates, permits (state and federal) and history for purposes of replacing the vessel. In instances when a vessel owner retains all certificates, permits, and history they must be applied to a replacement vessel owned by said individual within ninety (90) days.
  - a. Change in ownership: An Exemption Certificate is presumed to transfer with the vessel whenever it is bought, sold, or otherwise transferred, unless there is a written agreement, signed by the transferor/seller and transferee/buyer, or other credible written evidence, verifying that the transferor/seller is retaining the vessel's fishing and permit history for purposes of replacing the vessel. Individuals who purchase a vessel issued an Exemption Certificate must supply credible written evidence verifying that they are the full owner of said vessel. Vessel ownership will be determined solely by an issued and valid (unexpired) US Coast Guard documentation or state registration.
  - b. Replacement Vessels: A vessel owner wishing to transfer an Exemption Certificate must provide proof to the satisfaction of the DEM that the applicant vessel is replacing a vessel and that said certificate is only applicable to the vessel for which the Exemption Certificate has been transferred.

- (1) The vessel owner must supply credible written evidence verifying that the transferor/seller is retaining the vessel's Exemption Certificate for purposes of replacing the vessel. If a vessel owner elects to sever the Exemption Certificate from a vessel, the Exemption Certificate may be transferred only to another vessel fully owned by said vessel owner. Proof of full ownership of both vessels is required. Vessel ownership will be determined solely by an issued and valid (unexpired) US Coast Guard documentation or state registration.
- (2) Vessel permits (state and federal), Exemption Certificates, and fishing history cannot be split.
- (3) An Exemption Certificate may not be combined to create larger replacement vessels.
- (4) The replacement vessel may not exceed a 10 percent increase in length overall (LOA), a 10 percent increase in gross registered tonnage (GRT) or net tonnage (NT), or a 20 percent increase in horsepower of the vessel's baseline specifications, as applicable.
- (5) Vessel baseline specifications: The vessel baseline specifications in this section are the respective specifications (length, gross registered tonnage, net tonnage, horsepower) of the vessel that was initially issued an Exemption Certificate.
- (6) A vessel may be upgraded, whether through refitting or replacement, and be eligible to retain an Exemption Certificate, only if the upgrade complies with the following:
  - (AA) The vessel's horsepower may be increased only once, whether through refitting or replacement. Such an increase may not exceed 20 percent of the horsepower of the vessel's baseline specifications, as applicable.
  - (BB) The vessel's length, GRT, and NT may be increased only once, whether through refitting or replacement. Any increase in any of these three specifications of vessel size may not exceed 10 percent of the vessel's baseline specifications, as applicable. If any of these three specifications is increased, any increase in the other two must be performed at the same time. This

type of upgrade may be done separately from an engine horsepower upgrade.

4. Exemption Certificates may not be:
  - a. Pledged, mortgaged, leased, or encumbered in any way;
  - b. Transferred with any retained right of repossession or foreclosure, or any condition requiring a subsequent transfer; or
  - c. Attached, distrained, or sold on execution of judgment.
- E. Otter trawl Mesh size: Otter trawlers that land or possess 100 pounds (45.4 kg) or more of Summer flounder per day from May 1 through October 31; or 200 pounds (90.8 kg) or more of summer flounder per trip from November 1 through April 30, must fish with nets or combinations of nets that have a minimum mesh size of 5.5 inch (14.0 cm) diamond, or 6 inch (15.2 cm) square mesh applied throughout the body, extension(s) and cod end portion of the net.
- F. Summer flounder may be landed between the hours of 6:00 AM to 8:00 PM only;
- G. Control Date: A control date of December 31, 2010, is established for the commercial Summer flounder fishery in Rhode Island.

### **3.11 Tautog**

#### **3.11.1 Recreational**

- A. Minimum size: Sixteen (16) inches.
- B. Seasons and possession limits:
  1. January 1 through March 31: Closed.
  2. April 1 through May 31: Three (3) fish per person per calendar day.
  3. June 1 through July 31: Closed.
  4. August 1 through October 14: Three (3) fish per person per calendar day.
  5. October 15 through December 31: Five (5) fish per person per calendar day.
  6. Maximum per vessel possession limit: The possession limit shall be per person per calendar day, as stated above, with a maximum of ten (10) fish per vessel per calendar day.
  7. Licensed Party and Charter vessels seasons and possession limits:

- a. January 1 through March 31: Closed
- b. April 1 through May 31: Three (3) fish per person per calendar day.
- c. June 1 through July 31: Closed.
- d. August 1 through October 14: Three (3) fish per person per calendar day.
- e. October 15 through December 31: Five (5) fish per person per calendar day.
- f. Licensed Party/charter vessels are not subject to the ten (10) fish per vessel per calendar day restriction.

### 3.11.2 Commercial

- A. Minimum size: Sixteen (16) inches.
- B. Seasons, allocations, and possession limit: ~~The total allowable harvest of tautog will be established annually, and will be that amount allocated to the State of Rhode Island by the Regional Fishery Management Council and/or the ASMFC. The quota shall only be available during the following seasons:~~
  - 1. January 1 through March 30: Closed.
  - 2. April 1 through May 31:
    - a. Allocation: 50% of the annual quota.
    - b. Possession limit: Ten (10) fish per vessel per day.
  - 3. June 1 through October 14: Closed.
  - 4. October 15 through December 31:
    - a. Allocation: 50% of the annual quota
    - b. Possession limit: Ten (10) fish per vessel per day.
- C. Commercial tautog tagging.
  - 1. No tautog shall be sold, purchased, bartered, or traded in RI unless a tautog tag issued by the Director has been affixed to the left opercula bone with the tag number displayed.
  - 2. All tautog harvested and landed in RI must be tagged at the time of harvest, prior to offloading.

3. Eligibility: Tags shall be available only to RI commercially licensed fishermen authorized to harvest and/or land tautog.
4. No person shall transfer tautog tags between individuals or fish.
5. Tags are valid for one (1) calendar year.
6. All unused tags shall be returned to DMF by February 15 of the following year accompanied by the tag reporting form with the disposition of all tags (used, returned, broken, or lost) recorded. Failure to return tags and reports may result in the harvester's inability to participate in the commercial tautog fishery in the future.
7. No person shall reuse, counterfeit, alter, or modify any tautog tag, or possess, use, or attempt to use any counterfeit, altered or modified tags. Any person found in violation may be prohibited from participating in the commercial tautog fishery in the future.
8. Tautog must remain tagged until they reach the final consumer. Processed or fileted tautog shall be packed with the tag and available for inspection, with tags retained until all process or fileted tautog are sold.
9. This section shall become effective on January 1, 2020.

## **3.12 American eel**

### **3.12.1 Recreational**

- A. Minimum size: Nine (9) inches.
- B. Season: January 1 through December 31.
- C. Possession limit: Twenty-five (25) fish per angler per day.
- D. Licensed Party and Charter vessel season and possession limit:
  1. Season: January 1 through December 31.
  2. Possession limit: Fifty (50) fish per angler per day for the licensed captain and any employed crew member; and twenty-five (25) fish per angler per day for any paying customer.

### **3.12.2 Commercial**

- A. Minimum size: Nine (9) inches.
- B. Season: January 1 through December 31.

1. Closed season: September 1 through December 31 annually for any gear type other than baited traps/pots or spears.
- C. Possession limit: Unlimited.
- D. Commercial Eel pot restrictions: Eel pots shall have a minimum mesh size of  $\frac{1}{2}$  by  $\frac{1}{2}$  inches or shall have a 4 by 4 inch escape panel constructed of a mesh size of at least  $\frac{1}{2}$  by  $\frac{1}{2}$  inch mesh. The escape vent allowance will be in effect from January 1, 2014 – December 31, 2016, after which the entire pot must meet the  $\frac{1}{2}$  by  $\frac{1}{2}$  inches mesh requirement.

### **3.13 American plaice**

#### **3.13.1 Recreational**

- A. Minimum size: Fourteen inches (14”).
- B. Fishing year: The recreational American plaice fishery shall operate on a May 1 through April 30 fishing year.
- C. Possession limit:
1. There is no recreational possession limit for American plaice provided the vessel is fishing in state waters and does not have a federal permit authorizing the harvest of American plaice.
  2. Vessels in possession of a federal permit authorizing the recreational harvest of American plaice in federal waters may harvest American plaice in state waters in the amount equal to the federal regulations.

#### **3.13.2 Commercial**

- A. Minimum size: Twelve inches (12”).
- B. Fishing year: The commercial American plaice fishery shall operate on a May 1 through April 30 fishing year.
- C. Possession limit:
1. There is no commercial possession limit for American plaice provided the vessel is fishing in state waters and does not have a federal permit authorizing the harvest of American plaice.
  2. Vessels in possession of a federal permit authorizing the commercial harvest of American plaice in federal waters may harvest American plaice in state waters in the amount equal to the federal regulations.

### **3.14 American shad**

The harvest, landing, or possession of American shad in the marine waters of Rhode Island is prohibited.

### **3.15 Atlantic herring**

#### **3.15.1 Commercial**

- A. Season: The season for Atlantic herring begins annually on January 1. When the Atlantic herring quota has been harvested as determined by NOAA Fisheries, the season will close.
- B. Possession limit: 2,000 pounds per vessel per day, unless the vessel holds a RI State Waters Atlantic Herring Fishing permit.
- C. Rhode Island State Waters Atlantic Herring Fishing Permit: A permit from DEM is required for vessels engaged in the fishing and/or processing of over 2,000 pounds of Atlantic herring per day in Rhode Island state waters.
  - 1. Issuance of this permit is contingent on fishing vessel captains attending a meeting with DEM staff where they are required to give proof that:
    - a. The vessel and its captain(s) have obtained all necessary and applicable authorizations to fish for Atlantic herring in RI waters (license, endorsements(s), and vessel declarations);
    - b. The vessel captain(s) have provided a valid email address to DEM at which the captain can access while fishing for the purpose of receiving advisories pertaining to river herring;
    - c. The vessel captain(s) have received from DEM a chart of fixed commercial fishing gear locations in Rhode Island waters and will have said chart in his/her possession while engaged in the fishing and/or processing of Atlantic Herring in RI waters;
    - d. The vessel captain(s) have received from DEM a copy of all applicable regulations governing the commercial harvest of Atlantic herring in Rhode Island waters.
  - 2. Permits shall be issued annually and are valid for one calendar year from January 1 to December 31.
  - 3. Issuance of the permit is contingent upon a background check to determine if the applicant captain or vessel has been assessed a criminal or administrative penalty in the past three years of this section or § 3.25 of this Part (River herring) or more than one marine fisheries violation.

- D. River Herring Bycatch Allowance: Vessels possessing a federal Atlantic herring permit fishing in federal waters may transit Rhode Island state waters and make a landing in possession of alewives, or blueback herring, *Alosa aestivalis* (river herring) provided that the count of the combined river herring is 5% or less than the count of Atlantic herring onboard the vessel.
1. The percentage of River herring in the catch will be assessed by sorting and counting a batch of fish taken from the catch of Atlantic herring on board the vessel or being landed by the vessel. This determination as to the percentage of River herring in the catch shall be accomplished by filling a container as defined herein, with a portion of the catch and examining the contents of said container. The percentage of river herring in said container shall be deemed to be representative of the percentage of River herring in the catch as a whole for purposes of a determination as to whether a vessel is in compliance with the requirements of this section.
  2. A batch of fish is defined as all fish in a separate container.
  3. A container is defined as any box, tote, bag, bucket or other receptacle capable of retaining at least 25 gallons of loose fish which may be separated from the total catch of Atlantic herring being landed.
- E. Atlantic Herring Processing: No person may process Atlantic herring for purposes other than human consumption. Direct mealing of Atlantic herring is prohibited.
- F. ~~Atlantic Herring-~~ Vessel ~~Size and Horsepower~~ restrictions: No vessel harvesting Atlantic herring in the Atlantic coast herring fishery shall exceed 165 feet in length overall, and 3,000 horsepower.

### **3.16 Atlantic salmon**

The harvest, landing, or possession of Atlantic salmon in the marine waters of Rhode Island is prohibited.

### **3.17 Atlantic sturgeon**

The harvest, landing, or possession of Atlantic sturgeon in the marine waters of Rhode Island is prohibited.

### **3.18 Bluefish**

#### **3.18.1 Recreational**

Possession limit: Fifteen (15) fish per person per calendar day.

#### **3.18.2 Commercial**

- A. Minimum size: ~~Twelve inches (12")~~ Eighteen inches (18").

B. Seasons and possession limits:

1. January 1 through April 30: One thousand (1,000) pounds per vessel per bi-week.
2. May 1 through second Saturday in November: ~~Eight thousand (8,000)~~ Six thousand (6,000) pounds per vessel per week.
3. Second Sunday in November through December 31: Five hundred (500) pounds per vessel per week.

### 3.19 Coastal sharks

#### 3.19.1 Recreational

- A. Prohibited species. Taking or possessing any of the following shark species is prohibited: Sandbar, Silky, Sand tiger, Bigeye sand tiger, Whale, Basking, White, Dusky, Bignose, Galapagos, Night, Reef, Narrowtooth, Caribbean sharpnose, Smalltail, Atlantic angel, Longfin mako, Bigeye thresher, Sharpnose sevengill, Bluntnose sixgill, and Bigeye sixgill.
- B. Landings requirements: No person fishing recreationally shall possess or land sharks that do not have heads, tails, and fins attached naturally to the carcass. Sharks may be gutted and bled by making an incision at the base of the caudal peduncle provided the tail is not removed. No person fishing recreationally shall fillet a shark at sea or otherwise cut a shark into pieces at sea.
- C. Minimum size:
1. Smooth Dogfish, Atlantic sharpnose, Finetooth, Blacknose, and Bonnethead shark: No minimum size.
  2. Tiger, Blacktip, Spinner, Bull, Lemon, Nurse, Porbeagle, Common thresher, Oceanic whitetip, and Blue shark: Minimum fork length is 54 inches.
  3. Scalloped hammerhead, Smooth hammerhead, and Great hammerhead shark: Minimum fork length is 78 inches.
  4. Shortfin Mako:
    - a. Females: Minimum fork length is eighty-three inches (83”).
    - b. Males: Minimum fork length is seventy-one inches (71”).
- D. Shore-based possession limits:

1. One (1) shark per person per calendar day, with one additional bonnethead and one (1) additional Atlantic sharpnose shark per person per calendar day.
  2. Smoothhound sharks: Unlimited.
- E. Vessel-based possession limits:
1. One (1) shark per vessel per calendar day, or per trip per calendar day, whichever is less, regardless of the number of people on board the vessel, with one (1) additional bonnethead and one additional Atlantic sharpnose shark per vessel per calendar day, or per trip per calendar day, whichever is less.
  2. Smoothhound sharks: Unlimited.
  3. Sharks that are transported by vessel are considered "boat assisted" and "vessel-based" regardless of how or where they were caught.
- F. Authorized gear: No person fishing recreationally shall take sharks by any method other than rod and reel or handline. Handlines are defined as a mainline to which no more than two gangions or hooks are attached; retrieved by hand, not by mechanical means; and attached to, or in contact with, a vessel.
1. Any vessel using Rod and Reel, must adhere to the following:
    - a. Use corrodible circle hooks, which are defined as non-offset hooks with the point turned perpendicularly back to the shanks; and
    - b. Maximize gear removal, as safely as possible, when releasing sharks.

### **3.19.2 Commercial**

- A. Commercial species groups: Coastal sharks are grouped into commercial species groups as follows:
1. Prohibited: Sand tiger, Bigeye sandtiger, Whale, Basking, White, Dusky, Bignose, Galapagos, Night, Reef, Narrowtooth, Caribbean sharpnose, Smalltail, Atlantic angel, Longfin mako, Bigeye thresher, Sharpnose sevengill, Bluntnose sixgill, Blacknose, and Bigeye sixgill shark.
  2. Research: Sandbar shark.
  3. Smoothhound: Smooth dogfish and Florida smoothhound shark.
  4. Non-Blacknose Small Coastal: Atlantic sharpnose, Finetooth, and Bonnethead shark.

5. Blacknose: Blacknose shark.
  6. Aggregated Large Coastal: Silky, Tiger, Blacktip, Spinner, Bull, Lemon, and Nurse shark.
  7. Hammerhead: Scalloped hammerhead, Great hammerhead, and Smooth hammerhead shark.
  8. Pelagic: Shortfin mako, Porbeagle, Common thresher, Oceanic whitetip, and Blue shark.
- B. Prohibited species: Taking or possessing any of the species of sharks in the Prohibited and Research species groups is prohibited:
- C. Fishing year: January 1 through December 31.
- D. Quota specification:
1. Smoothhound sharks: A total annual statewide quota will be established for the State by the ASMFC and/or NOAA Fisheries.
  2. Species groups other than Smoothhound sharks will be established annually by the ASMFC and/or NOAA Fisheries.
- E. Seasons: Seasonal periods for commercial shark fisheries may be established annually either through NOAA Fisheries, ASMFC, or DEM.
- F. Possession limit:
1. Smoothhound, Non-Blacknose Small Coastal, and Pelagic shark species groups: Unlimited.
  2. Aggregated Large Coastal and Hammerhead species groups: Twenty-five (25) sharks per vessel per day, adjusting to between fifty-five (55) and zero (0) sharks per vessel per day during the fishing year as determined by NOAA Fisheries.
  3. It shall be unlawful for any person to possess any species of shark in state waters when NOAA Fisheries prohibits the possession of that species in federal waters.
- G. Display and research of sharks: No person shall possess, transport, sell or offer to sell any of the shark species listed in the Prohibited and Research Species groups without a valid state collector's permit obtained from the Director. Any person so authorized shall:

1. Report to the Director within thirty (30) days of possession the species identification, length, weight, date, and location where caught by latitude and longitude coordinates, and the gear used; and
  2. For each shark taken for live display, the holder of the permit shall also report to the Director annually by December 31 for the life of the shark. The report shall include all of the information specified in the original report to the Director pertaining to the sharks, as well as updated information on the length and weight of the shark.
- H. Authorized sale: No person shall sell any shark species to a person or dealer who does not possess a Rhode Island commercial dealer license, and a federal Commercial Shark Dealer Permit issued by the NOAA Fisheries.
- I. Authorized commercial gear: No person shall take or possess sharks using any method other than the following gear types:
1. Rod & reel. Any vessel using Rod and Reel, must adhere to the following:
    - a. Use corrodible circle hooks, which are defined as non-offset hooks with the point turned perpendicularly back to the shanks; and
    - b. Maximize gear removal, as safely as possible, when releasing sharks.
  2. Handlines, which are defined as a mainline to which no more than two gangions or hooks are attached. A handline is retrieved by hand, not by mechanical means, and must be attached to, or in contact with, a vessel;
  3. Small mesh gillnets which are defined as having a stretch mesh size smaller than five (5) inches;
  4. Large mesh gillnets which are defined as having a stretch mesh size equal to or greater than five (5) inches. Any vessel using large-mesh gillnets, must use nets that are shorter than 2.5 kilometers;
  5. Trawl nets;
  6. Shortlines which are defined as fishing lines containing fifty (50) or fewer hooks and measuring less than five hundred (500) yards in length. A maximum of two (2) shortlines shall be allowed per vessel. Any vessel using a shortline shall adhere to the following:
    - a. Use corrodible circle hooks, which are defined as non-offset hooks with the point turned perpendicularly back to the shanks; and
    - b. Practice the protocols, and possess the federally required release equipment, for pelagic and bottom longlines for the safe handling,

release, and disentanglement of sea turtles and other non-target species; and

- c. All captains and vessel owners must be certified in using, handling and release equipment. Captains and vessel owners can become certified by attending a Protected Species Safe Handling, Release, and Identification Workshop offered by NOAA Fisheries.
- 7. Pound nets/fish traps;
  - 8. Weirs.
- J. Prohibition of finning: Finning is defined as the act of taking a shark and removing its fins. Finning of sharks is prohibited in all state waters. All sharks, with the exception of smoothhound, possessed by commercial fishermen within state boundaries must have the tails and fins attached naturally to the carcass until landed. Fins may be cut as long as they remain attached to the carcass, by natural means, with at least a small portion of uncut skin. Sharks may be gutted and bled provided the tail is not removed. Sharks taken and possessed by commercial fishermen may have the heads removed, but no commercial fisherman shall fillet a shark at sea or otherwise cut a shark into pieces at sea.
- 1. Commercial fishermen may eviscerate and remove the head and all shark fins of smooth dogfish while at sea provided smooth dogfish make up at least 25 percent, by weight, of total catch on board at the time of landing. Trips that do not meet the 25 percent catch composition requirement can land smooth dogfish, but the fins must remain naturally attached to the carcass. If fins are removed, the total wet weight of the shark fins may not exceed 12 percent of the total dressed weight of smoothhound carcasses landed or found on board a vessel. Commercial fishermen may retain other sharks on board provided the fins of other shark species remain naturally attached to the carcass through offloading.

## **3.20 Cod**

### **3.20.1 Recreational**

- A. Minimum size: The minimum size in state waters is equal to the minimum size in federal waters, Outside Gulf of Maine (GOM) Regulated Mesh Area, as codified at 50 C.F.R. § 648.89(b).
- B. Possession limit: The possession limit in state waters is equal to the possession limit in federal waters for Georges Bank (GB) Cod, as codified in 50 C.F.R. § 648.89(c).

### **3.20.2 Commercial**

- A. Minimum size: Nineteen inches (19”).

- B. Fishing year: The commercial Cod fishery shall operate on a May 1 through April 30 fishing year.
- C. Possession limit:
  - 1. 1,000 pounds per vessel per calendar day for any vessel fishing in state waters. The possession limit may be modified on the basis of a RI state water cod quota as set by DEM, which shall be equal to 1% of the federal Georges Bank cod annual catch limit (ACL) for the given fishing year. When 90% of the state water quota has been harvested as determined by the DEM, the possession limit will decrease to 75 pounds of cod per vessel per calendar day for the remainder of the fishing year.
  - 2. Vessels in possession of a federal permit authorizing the commercial harvest of cod in federal waters may harvest, possess, or land cod in state waters in the amount equal to the federal regulations.

### **3.21 Haddock**

#### **3.21.1 Recreational**

- A. Minimum size: Fourteen inches (18”).
- B. Fishing year: The recreational haddock fishery shall operate on a May 1 through April 30 fishing year.
- C. Possession limit:
  - 1. There is no recreational possession limit for haddock provided the vessel is fishing in state waters and does not have a federal permit authorizing the harvest of haddock.
  - 2. Vessels in possession of a federal permit authorizing the recreational harvest of haddock in federal waters may harvest, possess, or land haddock in state waters in the amount equal to the federal regulations.

#### **3.21.2 Commercial**

- A. Minimum size: Sixteen inches (16”).
- B. Fishing year: The commercial haddock fishery shall operate on a May 1 through April 30 fishing year.
- C. Possession limit:
  - 1. There is no commercial possession limit for haddock provided the vessel is fishing in state waters and does not have a federal permit authorizing the harvest of haddock.

2. Vessels in possession of a federal permit authorizing the commercial harvest of haddock in federal waters may harvest, possess, or land haddock in state waters in the amount equal to the federal regulations.

## **3.22 Menhaden**

### **3.22.1 Recreational**

- A. Minimum size: No minimum size.
- B. Season: January 1 through December 31.
- C. Possession limit:
  1. Less than or equal to four (4) inches in total length: Unlimited.
  2. Greater than four (4) inches in total length: Two hundred (200) fish/person/day.

### **3.22.2 Commercial**

- A. Menhaden Management Area: Narragansett Bay in its entirety is designated a Menhaden Management Area pursuant to R.I. Gen. Laws § 20-4.1-1. This area shall include the east and west passages of Narragansett Bay, Mt. Hope Bay, and the Sakonnet River, and be bordered on the south by a line from Bonnet Point to Beavertail Point to Castle Hill Light. The southern boundary further extends from Land's End to Sachuest Point and then to Sakonnet Light. The following regulations govern all commercial menhaden operations conducted in the Menhaden Management Area (Management Area).
  1. Opening and closure of fishery:
    - a. Fishery opening - possession limits:
      - (1) Biomass Floor: On an annual basis in the spring, the DEM shall conduct regular estimates of the standing stock of menhaden utilizing approved scientific monitoring methods. On the basis of those estimates, DEM shall open the commercial fishery at an initial possession limit of 120,000 pounds per vessel per calendar day when the estimated weekly standing stock reaches 2,000,000 pounds.
    - b. Fishery closure:
      - (1) Biomass Ceiling: When 50% of the estimated standing stock of menhaden stock, above the minimum threshold amount of 1,500,000 pounds, is harvested, the DEM shall close the menhaden fishery until further notice.

- (2) If at any time the stock estimate drops below 1,500,000 pounds, the DEM shall close the commercial fishery and the incidental catch fishery will be in effect until further notice.
  - c. Fall opening in the Menhaden Management Area:
    - (1) Beginning September 1 annually, the area south of a line extending from the Jamestown and Newport Bridges, and the area south of a line extending from Fogland Point to Sandy Point in the Sakonnet River, to the southern extent of the Management Area, will be open to the harvest of menhaden by purse seine provided that the state's quota has not been exhausted or if the Episodic Event Set Aside Program has been enacted in RI.
    - (2) Possession limit: 25,000 pounds per vessel per day.
2. Commercial Vessel restrictions:
  - a. This section does not apply to small scale fisheries as defined in § 3.22.2(D)(1)(b) of this Part, or floating fish traps.
  - b. The use of purse seines shall be permitted only in accordance with the following terms and conditions:
    - (1) All nets shall be less than 100 fathoms (600 feet) in length and less than 15 fathoms (90 feet) in depth.
    - (2) All nets shall be marked with fluorescent-colored float buoys, distinguishable from the other float buoys on the net, at intervals of 50 feet.
    - (3) Annually, prior to use, all nets shall be inspected and certified as being in conformance with the provisions of this section by the DEM Division of Law Enforcement (DLE). Once inspected and certified, a net may be used throughout the duration of the calendar year in which it was inspected, provided that it is not altered with regard to any of the provisions of this section. Any net that is altered with regard to any of the provisions of this section must be re-inspected and recertified prior to use.
  - c. The possession or taking of menhaden by a fishing vessel engaged in the commercial menhaden fishery is prohibited in the following areas:
    - (1) Providence River: Described as the waters north of a line extending from Rocky Point to Conimicut Light in the city of

Warwick, and further extending to Nayatt Point in the town of Barrington.

(2) Greenwich Bay: Described as the waters of Greenwich Bay west and north of a line extending from the flag pole on Warwick Point to Sandy Point in the city of Warwick.

- d. The possession or taking of menhaden by a fishing vessel engaged in the commercial menhaden fishery is prohibited on any Saturday, Sunday, official state holiday, or prior to sunrise or following sunset.
- e. Fish storage capacity: A fishing vessel engaged in the commercial menhaden fishery may not have a useable fish storage capacity greater than 120,000 pounds. Prior to the commencement of fishing, for any vessel not previously certified through this process, each vessel must be inspected by a certified marine surveyor and assessed with regard to its fish storage capacity. Such certification must be kept aboard the vessel at all times. Vessels must either be certified as having a useable storage capacity of 120,000 pounds or less, or for vessels with a fish storage capacity greater than 120,000 pounds the excess capacity is rendered unusable in accordance with the specifications set forth in the assessment.

B. Possession of menhaden in RI under State Quota Program:

- 1. Possession limit: 120,000 pounds per vessel per day.
- 2. Once the quota has been reached, the fishery will close for directed fisheries, including but not limited to purse seine operations, and the incidental catch fishery will be in effect.
- 3. All commercial menhaden operations conducted in the Management Area, prior to and after the State's quota has been reached, are subject to the provisions of § 3.22.2(A) of this Part.
- 4. The transiting provision in § 1.6(C)(1)(b) of this Subchapter does not apply to the commercial menhaden fishery. Any vessel transiting state waters must abide by the current state possession limit

C. Episodic Event Set Aside Program:

- 1. After the State's quota has been reached, if RI is approved to participate in the Episodic Event Set Aside Program for Menhaden, as established by the ASMFC, the possession limit for menhaden will be 120,000 pounds per vessel per day, until the Set Aside quota has been exhausted, as determined by the ASMFC and/or the DEM, at which time the program will end and the directed fishery will close. Vessels that target and land menhaden in RI under this program must harvest only from RI waters and,

if operating in the Management Area, must adhere to all the provisions as specified in § 3.22.2(A) of this Part.

2. The Episodic Event Set Aside Program will end on October 31 annually, or when the Set Aside quota has been harvested, whichever first occurs.

D. Incidental catch Fishery:

1. Upon closure of the commercial menhaden fishery, an incidental catch fishery will be in effect as follows:

a. Possession limit:

- (1) 6,000 pounds/vessel/day for non-directed and small-scale gears.
- (2) 12,000 pounds/vessel/day for two commercially licensed individuals harvesting from the same vessel, fishing stationary multi-species gear.

b. Gear Types:

- (1) Non-directed: Anchored/stake gillnets, trawls, fyke nets, and floating fish traps.
- (2) Small-scale: Cast nets, pots, hook and line, hand lines, trammel nets, and bait nets.
- (3) Stationary multi-species: Anchored/stake gillnets, floating fish traps, and fyke nets.

E. Commercial vessel reporting requirements:

1. This section does not apply to small scale fisheries as defined in § 3.22.2(D)(1)(b) of this Part, or floating fish
2. Any fisher intending to engage in the commercial menhaden fishery in the Management Area shall notify the DLE at (401) 222-3070 prior to taking or possessing menhaden. At the time that a fisher advises the DLE of his/her intent to harvest menhaden, the DLE shall notify said fisher of any modification which may have been established in the possession limit for menhaden.
3. Each person engaging in the commercial menhaden fishery shall contact the DEM at (401) 423-1940 at the end of each day to report the area fished and the amount of menhaden in possession by the fisher in pounds.

- F. Prohibition on the harvesting of menhaden for reduction processing: The taking of Menhaden for reduction (fish meal) purposes is prohibited in Rhode Island waters. A vessel will be considered in the reduction (fish meal) business if any portion of the vessel's catch is sold for reduction.
- G. No person may transfer or attempt to transfer at sea, from one vessel to another, any finfish identified in these regulations.
- H. Possession limit compliance: It shall be unlawful for any commercial menhaden operation to land more than one possession limit per day.

### **3.23 Monkfish**

#### **3.23.1 Recreational**

- A. Minimum size: Seventeen inches (17") total length or eleven inches (11") tail length.
- B. Possession limit: 50 pounds tail weight, or 166 pounds whole weight per vessel per calendar day. Whole weight is defined as the weight of monkfish that are gutted (i.e. stomach, liver, and other entrails removed) and have the head and tail attached.

#### **3.23.2 Commercial**

- A. Minimum size: Seventeen inches (17") total length or eleven inches (11") tail length.
- B. Fishing year: The commercial monkfish fishery shall operate on a May 1 through April 30 fishing year.
- C. Possession limit:
  - 1. Non-federally permitted RI licensed vessel: 700 pounds tail weight or 2,037 pounds whole weight per vessel per calendar day. Whole weight is defined as the weight of monkfish that are gutted (i.e. stomach, liver, and other entrails removed) and have the head and tail attached. In SAFIS landing monkfish in the "whole" is reported using the grade "gutted, head on, tail on."
    - a. The possession of monkfish livers may not exceed the number of gutted-fish and tails combined.
    - b. The possession of monkfish heads may not exceed the number of gutted-head-off-fish and tails combined.
  - 2. The possession limit may be modified on the basis of a RI state water monkfish quota as set by DEM, which shall be equal to 3% of the federal

Southern Management Area (SMA) Total Allowable Landings (TAL) as specified by NOAA Fisheries. When 2% of the SMA TAL has been harvested as determined by the DEM, the possession limit will decrease to 50 pounds tail weight or 166 pounds whole weight per vessel per calendar day for the remainder of the fishing year.

- D. Vessels in possession of a federal permit authorizing the harvest of monkfish may harvest monkfish in state waters if and only if they are operating during a previously and properly declared day-at-sea; in such instances, such vessels may harvest monkfish in the amount authorized to be possessed pursuant to federal regulations.

### **3.24 Pollock**

#### **3.24.1 Recreational**

- A. Minimum size: Fourteen inches (14”).
- B. Fishing year: The recreational Pollock fishery shall operate on a May 1 through April 30 fishing year.
- C. Possession limit:
  - 1. There is no recreational possession limit for pollock provided the vessel is fishing in state waters and does not have a federal permit authorizing the harvest of pollock.
  - 2. Vessels in possession of a federal permit authorizing the recreational harvest of pollock in federal waters may harvest, possess, or land pollock in state waters in the amount equal to the federal regulations.

#### **3.24.2 Commercial**

- A. Minimum size: Nineteen inches (19”).
- B. Fishing year: The commercial pollock fishery shall operate on a May 1 through April 30 fishing year.
- C. Possession limit:
  - 1. There is no commercial possession limit for pollock provided the vessel is fishing in state waters and does not have a federal permit authorizing the harvest of pollock.
  - 2. Vessels in possession of a federal permit authorizing the commercial harvest of pollock in federal waters may harvest, possess, or land pollock in state waters in the amount equal to the federal regulations.

### **3.25 River herring**

The harvest, landing, or possession of River herring in the marine waters of Rhode Island is prohibited.

### **3.26 Skate**

#### **3.26.1 Recreational**

Possession limit: Ten (10) fish per person per day.

#### **3.26.2 Commercial**

- A. Fishing year: May 1 through April 30 annually.
- B. State-waters skate wing fishery: Shall be defined as skate harvested, possessed, or landed by a vessel:
  - 1. Fishing in state waters, not on a previously declared Day At Sea (DAS), and without an active federal open-access skate permit; and
  - 2. For food for human consumption with a designated ACCSP Disposition Code 001 = Food.
  - 3. Minimum size: No minimum size.
  - 4. Possession limit: 18,200 pounds per vessel per week for wings only; or 41,314 pounds per vessel per week for whole skate.
    - a. Barndoor skate shall not comprise more than 25% of total skate wing by weight per vessel per day at the time of landing.
    - b. Barndoor skate shall be kept separate from other species harvested.
    - c. When in possession of barndoor skate, vessels are prohibited from discarding any skate species that has been winged.
- C. Skate bait fishery: Shall be defined as skate harvested, possessed, or landed by a vessel:
  - 1. Fishing in state waters, not on a previously declared DAS, without an active federal open-access skate permit, and without a federal skate bait Letter of Authorization (LOA); and
  - 2. For use as bait with a designated ACCSP Disposition Code 008 = Bait.

3. Maximum length: Whole skates must measure less than twenty-three (23) inches total length.
4. Seasons and possession limits:
  - a. Sub-period I - May 1 through July 31:
    - (1) Possession Limit: 25,000 pounds whole skate per vessel per day. When NOAA Fisheries determines that 90 percent of a bait skate TAL for Sub-period I is landed, the possession limit will be reduced to an incidental catch limit of 8,000 pounds whole skate.
  - b. Sub-period II - August 1 through October 31:
    - (1) Possession Limit: 25,000 pounds whole skate per vessel per day. When NOAA Fisheries determines that 90 percent of a bait skate TAL for Sub-period II is landed, the possession limit will be reduced to an incidental catch limit of 8,000 pounds whole skate.
  - c. Sub-period III - November 1 through April 30:
    - (1) Possession Limit: 12,000 pounds whole skate per vessel per day. When NOAA Fisheries determines that 80 percent of a bait skate TAL for Sub-period III is landed, the possession limit will be reduced to an incidental catch limit of 8,000 pounds whole skate.
  - d. Possession limit adjustments: Following the implementation of the incidental catch limit, additional adjustments may be enacted, in accordance with actions by NOAA Fisheries.
    - (1) To ensure the skate bait fishery does not exceed its seasonal or annual TAL, the fishery will close when NOAA determines that 100% of the skate bait TAL for a season is to be harvested.
    - (2) To achieve the seasonal or annual TAL, incidental possession limits may be lifted, reinstating the standard seasonal possession limit.

### **3.26.3 Prohibited species**

The harvest, landing, or possession of thorny skate ~~with~~in the marine waters of Rhode Island is prohibited.

## 3.27 Spiny dogfish

### 3.27.1 Commercial

- A. Seasons, allocations, and possession limit: RI is currently designated as a state that is part of the Northern region. A Northern region possession limit and quota for spiny dogfish will be established annually by the ASMFC. The Northern region quota for spiny dogfish shall be the most recent allocation by the ASMFC, which is currently set at 58% of the coastwide quota.
1. Season: May 1 until April 30 of the following year.
  2. Possession limit: 6,000 pounds per vessel per calendar day. When notified that the quota in the Northern region has been harvested, or projected to be harvested, as determined by the NOAA Fisheries or the ASMFC, the DEM shall close the fishery for the remainder of the designated period.
  3. DEM is hereby authorized to enter into agreements with the other Northern Region States for the purpose of establishing seasons and possession limits governing the taking of spiny dogfish, and may make adjustments as deemed necessary to comply with said agreements. DEM will consult with the Rhode Island state-water spiny dogfish fishers prior to negotiating the subject agreements.
- B. Prohibition of Finning: Finning is defined as the act of taking a spiny dogfish, removing the fins, and returning the remainder of the spiny dogfish to the sea. Finning spiny dogfish is prohibited in state waters. In addition, removing any fin of spiny dogfish at-sea is prohibited (including the tail). All spiny dogfish must be landed with fins-naturally-attached to the corresponding carcass. Gutting fish at-sea is permitted, so long as the fins remain attached by a portion of uncut skin.

## 3.28 Yellowtail flounder

### 3.28.1 Recreational

- A. Minimum size: ~~Fourteen~~ Thirteen inches (13”).
- B. Fishing year: The recreational Yellowtail flounder fishery shall operate on a May 1 through April 30 fishing year.
- C. Possession Limit:
1. There is no recreational possession limit for Yellowtail flounder provided the vessel is fishing in state waters and does not have a federal permit authorizing the harvest of Yellowtail flounder.

2. Vessels in possession of a federal permit authorizing the recreational harvest of Yellowtail flounder in federal waters may harvest, possess, or land Yellowtail flounder in state waters in the amount equal to the federal regulations.

### **3.28.2 Commercial**

- A. Minimum size: Twelve inches (12”).
- B. Fishing year: The commercial Yellowtail flounder fishery shall operate on a May 1 through April 30 fishing year.
- C. Possession Limit:
  1. There is no commercial possession limit for Yellowtail flounder provided the vessel is fishing in state waters and does not have a federal permit authorizing the harvest of Yellowtail flounder.
  2. Vessels in possession of a federal permit authorizing the commercial harvest of Yellowtail flounder in federal waters may harvest, possess, or land Yellowtail flounder in state waters in the amount equal to the federal regulations.

## **3.29 Weakfish**

### **3.29.1 Recreational**

- A. Minimum size: Sixteen inches (16”).
- B. Season: January 1 through December 31.
- C. Possession limit: One (1) fish per person per calendar day.

### **3.29.2 Commercial**

- A. Minimum size: Sixteen inches (16”).
- B. Seasons and possession limits:
  1. June 1 through June 30: One hundred (100) pounds per vessel per calendar day.
  2. August 7 through November 8: One hundred (100) pounds per vessel per calendar day.
  3. At all other times, the possession limit is one hundred (100) pounds per vessel per calendar day as bycatch only with an equivalent poundage of other species required to be on board the vessel. Provided, however, that the commercial hook and line fishery is not permitted a bycatch allowance.

- C. For directed trawl operations, cod end mesh size must be  $\geq 4.5$ " diamond or 4.0" square.

### **3.30 Winter Flounder**

#### **3.30.1 Recreational**

- A. Minimum size: Twelve (12) inches.
- B. Season: March 1 through December 31.
- C. Possession limit: Two (2) fish per person per calendar day in Rhode Island waters.
- D. Closed Areas: The harvest or possession of Winter flounder is prohibited in Narragansett Bay north of the Colregs line; Potter Pond; Point Judith Pond; and the Harbor of Refuge.

#### **3.30.2 Commercial**

- A. Minimum Size: Twelve (12) inches.
- B. Season: January 1 through December 31.
- C. Possession limit: Fifty (50) pounds per vessel per day.
- D. Closed Areas: The harvest or possession of Winter flounder is prohibited in Narragansett Bay north of the Colregs line; Potter Pond; Point Judith Pond and the Harbor of Refuge.
- E. Minimum mesh size:
  - 1. Bottom trawl nets: Six (6) inch diamond mesh or six and one half (6.5) inch square mesh applied throughout the body and extension of the net, or any combination thereof, and six and one half (6.5) inch diamond mesh or six and one half (6.5) inch square mesh applied to the cod end of the bottom trawl nets.
  - 2. Gill nets: Six and one half (6.5) inch diamond mesh or six and one half (6.5) inch square mesh applied throughout the net. Vessels may utilize commercial fishing gear with mesh smaller than the sizes referenced in this section provided they do not possess any Winter flounder.
    - a. For vessels greater than 45 ft. in length overall, a diamond mesh cod end is defined as the first 50 meshes counting from the terminus of the net, and a square mesh cod end is defined as the first 100 bars counting from the terminus of the net.

- b. For vessels 45 ft or less in length overall, a diamond mesh cod end is defined as the first 25 meshes counting from the terminus of the net, and a square mesh cod end is defined as the first 50 bars counting from the terminus of the net.
- F. With the exception of gillnets and fyke nets, fishing for Winter flounder in waters north of the seaward entrance to all coastal salt ponds, (with the exception of Point Judith Pond and the Harbor of Refuge where the harvest or possession of winter flounder is prohibited), including the waters of Narrow River, and the waters of Little Narragansett Bay north of a line from Napatree Point to the western end of Sandy Point, including the waters of the Pawcatuck River, will be prohibited from one hour after sunset until one hour before sunrise. Gillnets and fyke nets may not be hauled from one hour after sunset to one hour before sunrise.

### **3.31 Witch flounder**

#### **3.31.1 Recreational**

- A. Minimum size: Fourteen inches (14”).
- B. Fishing year: The recreational Witch flounder fishery shall operate on a May 1 through April 30 fishing year.
- CB. Possession Limit:
  - 1. There is no recreational possession limit for Witch flounder provided the vessel is fishing in state waters and does not have a federal permit authorizing the harvest of Witch flounder.
  - 2. Vessels in possession of a federal permit authorizing the recreational harvest of Witch flounder in federal waters may harvest, possess, or land Witch flounder in state waters in the amount equal to the federal regulations.

#### **3.31.2 Commercial**

- A. Minimum size: Thirteen inches (13”).
- B. Fishing year: The commercial Witch flounder fishery shall operate on a May 1 through April 30 fishing year.
- C. Possession limit:
  - 1. There is no commercial possession limit for Witch flounder provided the vessel is fishing in state waters and does not have a federal permit authorizing the harvest of Witch flounder.

2. Vessels in possession of a federal permit authorizing the commercial harvest of Witch flounder in federal waters may harvest, possess, or land Witch flounder in state waters in the amount equal to the federal regulations.

### **3.32 Ocean pout**

The harvest, landing, or possession of Ocean pout in the marine waters of Rhode Island is prohibited.

### **3.33 Atlantic wolffish**

The harvest, landing, or possession of Atlantic wolffish in the marine waters of Rhode Island is prohibited.

**RHODE ISLAND GOVERNMENT REGISTER  
PUBLIC NOTICE OF PROPOSED RULEMAKING**

**DEPARTMENT OF ENVIRONMENTAL MANAGEMENT**

**Title of Rule:** Shellfish (250-RICR-90-00-4)

**Rule Identifier:** 250-RICR-90-00-4

**Rulemaking Action:** Proposed Amendment

**Important Dates:**

Date of Public Notice: 10/30/2019

Hearing Date: 11/12/2019

End of Public Comment: 11/29/2019

**Authority for this Rulemaking:**

R.I. Gen. Laws Title 20, R.I. Gen. Laws Chapters 42-17.1, 42-17.6, and 42-17.7, and in accordance with R.I. Gen. Laws Chapter 42-35, Administrative Procedures Act.

**Summary of Rulemaking Action:**

1. **Proposed new section 4.18:** Proposed adoption of a whelk pot tagging program.
2. Other non-substantive clarifications throughout regulation.

**Additional Information and Comments:**

All interested parties are invited to request additional information or submit written or oral comments concerning the proposed amendment until November 29, 2019 by contacting the appropriate party at the address listed below:

Peter Duhamel  
Department of Environmental Management  
3 Fort Wetherill Road  
Jamestown, RI 02835  
peter.duhamel@dem.ri.gov

**Public Hearing:**

A public hearing, in accordance with R.I. Gen. Laws § 42-35-2.8, to consider the proposed amendment shall be held on November 12, 2019 at 6:00 pm at URI Bay Campus, Corless Auditorium, South Ferry Road, Narragansett, RI 02882 at which time and place all persons interested therein will be heard. The seating capacity of the room will be enforced and therefore the number of persons participating in the hearing may be limited at any given time by the hearing officer, in order to comply with safety and fire codes.

The place of the public hearing is accessible to individuals who are handicapped. If communication assistance (readers/interpreters/captioners) is needed, or any other accommodation to ensure equal participation, please call 401-423-1927 or RI Relay 711 at least three (3) business days prior to the meeting so arrangements can be made to provide such assistance at no cost to the person requesting.

**Regulatory Analysis Summary and Supporting Documentation:**

In the development of the proposed amendment consideration was given to: (1) alternative approaches; (2) overlap or duplication with other statutory and regulatory provisions; and (3) significant economic impact on small business. No alternative approach, duplication, or overlap was identified based upon available information.

For full regulatory analysis or supporting documentation see agency contact person above.

**Public Hearing**  
**November 12, 2019**

**Proposed/annotated amendments**

Note: Proposed new language is identified as red underline; proposed language to be deleted is identified as ~~red-stricken~~.

**250-RICR-90-00-4**

**TITLE 250 – DEPARTMENT OF ENVIRONMENTAL MANAGEMENT**

**CHAPTER 90 – MARINE FISHERIES**

**SUBCHAPTER 00 – N/A**

PART 4 – Shellfish

**4.1 Purpose**

The purpose of these Rules and Regulations is to manage the marine resources of Rhode Island.

**4.2 Authority**

These Rules and Regulations are promulgated pursuant to R.I. Gen. Laws Title 20, R.I. Gen. Laws Chapters 42-17.1, 42-17.6, and 42-17.7, and in accordance with R.I. Gen. Laws Chapter 42-35, Administrative Procedures Act.

**4.3 Application**

The terms and provisions of these Rules and Regulations shall be liberally construed to permit the Department to effectuate the purposes of state law, goals, and policies.

**4.4 Definitions**

See Marine Fisheries Definitions, [Part 1 of this Subchapter](#).

**4.5 Severability**

If any provision of these Rules and Regulations, or the application thereof to any person or circumstances, is held invalid by a court of competent jurisdiction, the validity of the remainder of the Rules and Regulations shall not be affected thereby.

## 4.6 Superseded Rules and Regulations

On the effective date of these Rules and Regulations, all previous Rules and Regulations, and any policies regarding the administration and enforcement of these regulations shall be superseded. However, any enforcement action taken by, or application submitted to, the Department prior to the effective date of these Rules and Regulations shall be governed by the Rules and Regulations in effect at the time the enforcement action was taken, or application filed.

## 4.7 General Provisions

- A. Recreational harvest: Shellfish harvested recreationally shall not be sold or offered for sale.
- B. No person shall take shellfish from waters declared polluted by the Director pursuant to R.I. Gen. Laws § 20-8.1-3 unless authorized by the Director (ref. R.I. Gen. Laws § 20-8.1-5). This sub-section shall not apply to the harvest of Whelk or Bay scallop. For the water quality status of shellfish grounds subject to conditional closures or emergencies call 401-222-2900. (R.I. Gen. Laws Chapter 20-8.1)
- C. Night shellfishing prohibited: The harvesting of shellfish is prohibited during the hours between sundown and sunrise (R.I. Gen. Laws § 20-6-23).
- D. Opening shellfish on water: No person shall possess the meats of six (6) or more shellfish while shellfishing on the waters of the State, or throw the shells of open bay scallops onto bay scallop beds (R.I. Gen. Laws § 20-6-21).
- E. ~~Conch (w/Whelk)~~ – general provisions:
  - 1. Mutilation and/or possession of ~~conch whelk~~ meat; cooked or uncooked: Prior to landing of any ~~conchs whelk~~, no person shall mutilate any cooked or uncooked ~~conch whelk~~ by breaking and removing the meat from the shell or have in his or her possession any part or parts of any uncooked ~~conch whelk~~ so mutilated. In any and all prosecutions under this sub-section, the possession of any part or parts of any cooked or uncooked ~~conch whelk~~ so mutilated shall be prima facie evidence sufficient to convict. All ~~conchs whelks~~ are to be landed whole in the shell.
  - ~~2. Unauthorized hauling of conch pots: No person except the Director may haul, unduly disturb, or remove any animal from a conch pot of a person possessing a valid commercial fishing license to take conch, or from a person fishing recreationally for conch, without the written permission of that person.~~
  - ~~3. Unauthorized possession and/or transfer of conch pots: No person except the Director may sell, transfer, or have in his or her possession or control~~

~~any conch pot or associated line (warp) and/or buoy, without the written permission of the owner.~~

42. Hauling or setting ~~conch~~ whelk pots at night: No person shall haul or unduly disturb any ~~conch~~ whelk pot within the territorial waters of this state between the hours of one (1) hour after sundown and one (1) hour before sunrise.

F. License Required:

1. Recreational harvest – R.I. resident: R.I. residents are not required to obtain a license for the recreational harvest of shellfish (R.I. Gen. Laws § 20-6-1).
2. Recreational harvest – non-resident: A non-resident over the age of twelve (12) years wishing to take or possess shellfish recreationally in Rhode Island waters must obtain shellfish license (R.I. Gen. Laws § 20-2-22):
  - a. Annual: The fee for an annual shellfish license is two hundred dollars (\$200). This license will expire on the last day in February annually.
  - b. 14-day: The fee for a fourteen (14) day tourist license is eleven dollars (\$11). This license is valid for fourteen (14) consecutive days only, including the date of issue, and is limited to one (1) license per person per calendar year.
  - c. Non-resident landowner: A non-resident landowner may, with proof of residential property ownership in the form of a current tax bill from a town or city hall showing that the non-resident landowner is current in his or her property tax obligation, obtain an annual, non-commercial, non-resident shellfish license for a fee of twenty-five dollars (\$25) (R.I. Gen. Laws § 20-2-22(d)).
3. Commercial harvest: See specific requirements and conditions in DEM's [Part 2 of this Subchapter](#), Commercial and Recreational Saltwater Fishing Licensing Regulations.
  - a. A commercially licensed fisherman shall only sell, barter, or trade shellfish taken from Rhode Island waters to a licensed shellfish dealer or multipurpose dealer.
  - b. A commercially licensed fisherman shall not sell, deliver, or otherwise transfer shellfish taken from Rhode Island waters to a licensed shellfish or multipurpose dealer without first presenting said dealer, a valid shellfish license issued by the DEM.

## 4.8 Equipment Provisions and Harvest Methods

- A. SCUBA prohibition: The taking of shellfish by the use of a self-contained underwater breathing apparatus (SCUBA) from Green Hill Pond, Quonochontaug Pond, Ninigret Pond, and Potter Pond is prohibited (R.I. Gen. Laws § 20-6-30).
- B. The use of a diving apparatus is prohibited while recreational shoredigging.
- C. Use of devices capable of harvesting shellfish while in polluted areas: No person shall work, cast, haul, or have overboard a dredge, pair of tongs, rake or rakes, air-assisted equipment, water-assisted equipment, or any other implement capable of harvesting shellfish, except for the taking of ~~oouch~~ whelk in pots and the use of an implement commonly employed for the taking of bay scallops (within established bay scallop harvest seasons), in waters declared polluted by the Director (R.I. Gen. Laws § 20-8.1-6).
- D. Power hauling of tongs and bullrakes: Power hauling of tongs and bullrakes for any purpose other than the removal and retrieval of bullrakes and tongs from the benthic sediments is prohibited.
- E. Method of harvest of oysters, bay quahaugs, soft-shell clams: No person shall dig and/or take any oysters, bay quahaugs, soft-shell clams from the waters of this State by dredge(s), rakes, or other apparatus operated by mechanical power or hauled by power boats, unless as provided for in these regulations.
- F. Dimensions for bullrakes and tongs when using power hauling equipment: No person shall use any power hauling equipment in the operation of bullrakes and tongs with dimensions exceeding the following:
  - 1. Maximum width measured along a line parallel to the tooth bar: Thirty-one and one-half (31½) inches;
  - 2. Maximum tooth length: Four and one-half (4½) inches;
  - 3. Maximum basket depth: Twelve (12) inches, measured along a line perpendicular to the tooth bar and extending from the tooth bar to any point on the basket.
  - 4. Possession of bullrakes and tongs in excess of these size restrictions shall be prohibited aboard vessels equipped with any power hauling equipment.
  - 5. Except as required for safety or to avoid property loss, no vessel involved in the harvest of bay quahaugs or oysters by use of bullrakes or tongs may be moved or propelled by any source of mechanical power at any time when any bullrakes or tongs operated from such vessel are submerged in the waters of the state.

- G. Tong construction: No person shall take shellfish, or attempt to take shellfish, or have in his possession while on the waters of this State, with tongs not meeting the following dimensions:
1. Minimum tooth gap: Not less than one (1) inch apart.
  2. Heads: Heads on the bar or heads constructed with wires, rods, cross-bars, or reinforcement that will form a rectangle shall not be less than one (1) inch by two and one half (2½) inches.
  3. A tolerance of one sixteenth (1/16) of an inch is allowed.
- H. Bullrake construction: No person shall take shellfish, or attempt to take shellfish, or have in his possession while on the waters of this State, with a bullrake not meeting the following dimensions:
1. Minimum tooth or tine gap: Not less than one (1) inch apart.
  2. Crossbars or reinforcement that will form a rectangle shall not be less than one (1) inch by two and one half (2½) inches.
  3. A tolerance of one sixteenth (1/16) of an inch is allowed.
- I. Quahaug diving basket construction: No commercially licensed diver shall take or attempt to take quahaugs from the waters of the State of Rhode Island with a diver's quahaug harvesting basket, bag, or combination of basket and bag, or similar device not meeting the following dimensions:
1. Bar spacing: Not less than one (1) inch by two and one half (2½) inches. A tolerance of one sixteenth (1/16) inch is allowed.
  2. Bag mesh on the quahaug harvesting basket: Not less than two (2) inches when measured on the stretch (from inside of knot to inside of the knot). A tolerance of one eighth (1/8) inch for variance in the twine is allowed. The bag shall be hung on the square so that when held by the mouth, the twine forms fully opened squares.
- J. Dredging of bay scallops:
1. Maximum number of single dredges used: Six (6) single dredges.
  2. Maximum width of dredge blades: Twenty-eight (28) inches.
  3. Maximum length of bag: Thirty-six (36) inches.
  4. Each single dredge shall be towed and hauled aboard the registered vessel individually. All oysters, soft-shell clams, or bay quahaugs shall be

immediately returned to the waters from which they were taken (R.I. Gen. Laws §§ 20-6-7 and 20-6-19).

5. Areas where bay scallop dredging is prohibited: The use of bay scallop dredges is prohibited in closed areas of Shellfish Management Areas, ~~as identified in these regulations.~~

K. Dredging of blue mussels:

1. When dredging for blue mussels, all bay scallops, oysters, or bay quahaugs shall be immediately returned to the waters from which they were taken (R.I. Gen. Laws § 20-6-7).
2. Blue Mussel Dredging Permit: A permit issued from the Director is required for the commercial dredging for blue mussels. Applications shall be made annually on forms prescribed by the Director ~~and may be obtained by contacting the DEM Marine Fisheries, 3 Fort Wetherill Road, Jamestown, RI 02835 (423-1923)~~ (R.I. Gen. Laws § 20-6-7).

L. Dredging of surf clams and ocean quahaugs:

1. Surf clam gear restrictions:
  - a. Hydraulic dredging: The maximum width of a dredge blade, knife or manifold is forty-eight (48) inches.
  - b. Multiple dredge restriction: It is unlawful for any vessel to operate more than one dredge while harvesting for surf clams.
2. Areas prohibited for the dredging of surf clams or ocean quahaugs: All waters north of a line extending from Church Point in the town of Little Compton, to Flint Point in the town of Middletown; and north of a line extending from Castle Hill Point in the city of Newport, to Southwest Point in the town of Jamestown and to Bonnet Point in the town of Narragansett.
3. Tagging of cages: Shellfish cages must be tagged in accordance with the United States Food and Drug Administration/RIDOH regulations before being off-loaded in Rhode Island.

M. Dredging for sea scallops:

1. Maximum dredge size for a vessel in possession of sea scallops: Ten and one-half (10½) feet.
2. Minimum dredge ring size: Four (4) inches.
3. The minimum mesh size of a net, net material or any other material on the top of a sea scallop dredge (twine top) possessed or used by vessels

fishing with sea scallop dredge gear/net size of twine top is ten (10) inch square or diamond mesh.

#### 4.9 Minimum Sizes

- A. Bay quahaug: One inch (1") shell thickness (hinge width) (R.I. Gen. Laws § 20-6-11).
- B. Soft-shell clam: Two inches (2") measured as the shell diameter or parallel to the long axis of the clam (R.I. Gen. Laws § 20-6-11).
- C. Oyster: Three inches (3") measured parallel to the long axis of the oyster (R.I. Gen. Laws § 20-6-11).
- D. Bay scallop: The taking or possession of a seed Bay scallop is prohibited. Seed bay scallops shall be immediately returned to their natural beds in the water from which taken (R.I. Gen. Laws § 20-6-17).
- E. Surf clam: Five inches (5") measured parallel to the long axis of the clam.
- F. Sea scallop: Three and one-half inches (3½"), measuring in a straight line from the hinge to the part of the shell furthest from the hinge, whether caught within the jurisdiction of this State or otherwise.
- G. ~~Conec~~ Whelk: Three inches (3")(~~76.2mm~~) shell width or five and three eighths inches (5 3/8")(~~136.5 mm~~) shell length.

#### 4.10 Seasons

- A. Bay quahaug, soft-shell clam, blue mussel, sea scallop, ~~conec~~ whelk, surf clam, and ocean quahaug:
  - 1. Open daily in waters other than Shellfish Management Areas, unless otherwise closed due to pollution or other management purposes.
- B. Oyster: September 15 through May 15 annually.
- C. Bay scallop:
  - 1. Dip-netting from a boat: Open only from the first Saturday in November through December 31 annually.
  - 2. Dredging: Open only from December 1 through December 31 annually.

#### 4.11 Daily Possession Limits in Waters Other Than Shellfish Management Areas

- A. Recreational – R.I. resident:

1. Bay quahaug, soft-shell clam, surf clam, blue mussel, and oyster: One half ( $\frac{1}{2}$ ) bushel per person per day (R.I. Gen. Laws § 20-6-1).
  2. Bay scallop: One bushel per person per day (R.I. Gen. Laws § 20-6-1).
  3. ~~Conch~~ Whelk: One half ( $\frac{1}{2}$ ) bushel per resident per day; and maximum of one bushel per vessel per day.
    - a. ~~Conch~~ Whelk pot limit: Maximum of five (5) ~~conch~~ whelk pots in the water at any one time.
  4. Sea scallop: Forty (40) pounds shucked; or five bushels of in-shell scallops per vessel per day.
- B. Recreational – Licensed non-resident:
1. Bay quahaug, soft-shell clam, surf clam, blue mussel, and oyster: One peck per person per day (R.I. Gen. Laws § 20-6-10).
  2. Bay scallop: The harvest or possession of Bay scallops by non-residents is prohibited.
- C. ~~Conch~~ Whelk: The harvest or possession of conchs by non-residents is prohibited.
- D. Sea scallop: Forty (40) pounds shucked; or five (5) bushels of in-shell scallops per vessel per day.
- E. Commercial:
1. Bay quahaug:
    - a. Multi-purpose (MPURP) and Principal Effort License (PEL) holders: Twelve (12) bushels per person per day (R.I. Gen. Laws § 20-6-10).
    - b. Commercial Fishing License (CFL), Student shellfish license, and Over-65 shellfish license holders: Three (3) bushels per person per day (R.I. Gen. Laws § 20-2.1-5).
  2. Soft-shell clam: Twelve (12) bushels per person per day (R.I. Gen. Laws § 20-6-10).
  3. Oyster: Three (3) bushels per person per day (R.I. Gen. Laws § 20-6-10).
  4. Bay scallop: Three (3) bushels per person per day; and maximum of three (3) bushels per vessel per day (R.I. Gen. Laws § 20-6-16).
  5. Surf clam: Two hundred (200) bushels per person per day.

6. Ocean quahaug: Twenty six (26) cages or eight hundred thirty two (832) bushels per person per day.
7. Sea scallops: For non-federally permitted vessels, four hundred (400) pounds of shucked; or fifty (50) bushels of in-shell scallops per vessel per day.
8. **Conch Whelk**: Thirty five (35) bushels per vessel per day.
  - a. Commercial **conch whelk** pot limit: Maximum of three hundred (300) conch pots per licensee in the water at any one time.

## 4.12 Shellfish Management Areas – Descriptions, Seasons, and Possession Limits

### 4.12.1 General

- A. ~~Conimicut Point, Potowomut, High Banks, Bissel Cove/Fox Island, Mill Gut, Bristol Harbor, Kickemuit River, Jenny's Creek, Sakonnet River, Pt. Judith Pond, Potter Pond, Ninigret (Charlestown) Pond, Quonochontaug Pond, Winnapaug Pond, Green Hill Pond, Narrow River, Little Narragansett Bay/Pawcatuck River, Providence/Seekonk Rivers, Warren River, and Town Pond are declared~~ Shellfish Management Areas are established pursuant to R.I. Gen. Laws § 20-3-4.
- B. Shellfish Management Areas may have additional regulations specific to the Management Area. Refer to each Management Area listed below.
  1. In Shellfish Management Areas, shoredigging is open daily at reduced Shellfish Management Areas possession limits, unless closed due to pollution or other management purposes.
  2. Commercial boat harvest schedule in Shellfish Management Areas: Recommendation for a change to the default schedules specified herein shall be submitted to the Director at least sixty (60) days prior to the first proposed opening date.
  3. Greenwich Bay Area's 1 & 2:
    - a. The schedule for the month of December may include up to 48 hours of permitted shellfishing, spread over any number of days during the month, excluding December 25.
    - b. If weather or water quality conditions during the month of December prevent opening on two or more scheduled days, the DEM may modify the December schedule to allow for additional hours or days of permitted shellfishing.
- C. Daily possession limits:

1. Recreational – R.I. resident:
  - a. Bay quahaug, soft-shell clam, surf clam, blue mussel, and oyster: One peck per person per day.
  - b. Bay scallop: One bushel per person per day.
  - c. ~~Coneck~~ Whelk: One half (½) bushel per resident per day; or if a vessel with more than one (1) resident onboard is used, a maximum of one (1) bushel per vessel per day.
  - d. ~~Coneck~~ Whelk pot limit: Five (5) ~~cōnech~~ whelk pots in the water at any one time.
2. Recreational – licensed non-resident:
  - a. Bay quahaug, soft-shell clam, surf clam, blue mussel, and oyster: One half (½) peck per person per day.
  - b. Bay scallop: The harvest or possession of Bay scallops by non-residents is prohibited.
  - c. ~~Coneck~~ Whelk: The harvest or possession of ~~Coneck~~ whelk by non-residents is prohibited.
3. Commercial:
  - a. Bay quahaug, soft-shell clam, blue mussel, surf clam and oyster: Three bushels per person per calendar day; maximum of six (6) bushels per vessel per calendar day;
    - (1) A maximum of two (2) licensed persons per vessel is allowed.
    - (2) Possession limit for shore-digging in Greenwich Bay Management Area sub-areas 1 and 2: The possession limit is three (3) bushels per person per day whenever GB sub-area 1 is open to boat harvest, but one (1) peck per person per day whenever GB sub-area 1 is not open to boat harvest.
  - b. Bay scallop: Three (3) bushels per person per day; maximum of three (3) bushels per vessel per day.
  - c. ~~Coneck~~ Whelk:
    - (1) Thirty-five (35) bushels per vessel per day.

(2) Commercial ~~conch~~ whelk pot limit: Maximum of three hundred (300) ~~conch~~ whelk pots per licensee in the water at any one time.

#### 4.12.2 Shellfish Management Areas

- A. Greenwich Bay (GB): Described as the waters west of a line between the flagpole at the Warwick Country Club and the end of Sandy Point on the Potowomut Shore, in the town of East Greenwich and city of Warwick.
1. GB sub-area 1: Described as the waters east of a line between the DEM range marker located at the end of Neptune Street in Chepiwanoxet to the DEM range marker located on Cedar Tree Point, and north of a line between the far northeastern section of Chepiwanoxet Point and the westernmost flagpole on Promenade Street, Old Buttonwoods.
  2. GB sub-area 2: Described as the waters west of a line between Sally Rock Point and the westernmost flagpole on Promenade Street, Old Buttonwoods; and south of a line between the far northeastern section of Chepiwanoxet Point and the westernmost flagpole on Promenade Street, Old Buttonwoods.
  3. Commercial boat harvest schedule for GB sub-areas 1 and 2:
    - a. December 2019: Open from 8:00AM to 12:00PM on December 11, 13, 16, 18, 20, 23, 24, 26, 30, and 31.
    - b. January through April 2020: Open 8:00AM to 12:00PM on Mondays, Wednesdays, and Fridays from January 3 through April 29.
    - c. May 1 through November 30, 2020: Closed.
    - d. Default commercial boat harvest schedules for GB sub-areas 1 & 2: If a previously established boat harvest schedule expires, the following default schedule shall be in effect:
      - (1) Open 8:00AM to 12:00PM on Mondays, Wednesdays, and Fridays, beginning on the second Wednesday of December through the last Friday in April, excluding December 25 and January 1.
  4. GB Area 3: Described as the waters east of a line between Sally Rock Point and the westernmost flagpole on Promenade Street, Old Buttonwoods, and west of a line between the flagpole at the Warwick Country Club and the end of Sandy Point on the Potowomut Shore.
    - a. Commercial boat harvest schedule: Open daily.

- B. Conimicut Point: Described as the waters south of a line running from the pole (Latitude: 41° 43' 2.93" North, Longitude: 71° 21' 27.68" West) on Conimicut Point to the center of the Old Tower at Nayatt Point; and north of a line from the western most extension of Samuel Gorton Avenue in the city of Warwick, and the southernmost extension of Bay Road in the town of Barrington.
1. Harvest schedule: Open daily.
  2. The reduced Shellfish Management Area possession limit applies only to soft-shell clams.
- C. Potowomut: Described as the waters at the mouth of Greenwich Bay south of a line between the flagpole at the Warwick Country Club to the seaward end of Sandy Point and north of a line between and the seaward end of Pojac Point to buoy "G1" (Round Rock) to the Warwick Lighthouse, including all the waters of the Potowomut River seaward of the Forge Road Spillway, in the towns of East Greenwich and city of Warwick.
1. Area A: Described as the waters west of a line between the seaward end of Sandy Point and buoy "G1" (Round Rock) and north of a line between the seaward end of Pojac Point to buoy "G1" (Round Rock).
    - a. Harvest schedule: Open daily.
  2. Area B: Described as the triangular area east of a line between the seaward end of Sandy Point and buoy "G1" (Round Rock) and west of a line between the flagpole at the Warwick Country Club and buoy "G1" (Round Rock) and south of a line between the flagpole at the Warwick Country Club to the seaward end of Sandy Point. Area "B" is closed to shellfishing until further notice.
    - a. Harvest schedule: Closed except for the harvest of bay scallops by dip-netting from a boat during the open season for bay scallops.
  3. Area C: Described as the waters east of a line between the flagpole at the Warwick Country Club and buoy "G1" (Round Rock) and north of a line from buoy "G1" (Round Rock) to the Warwick Lighthouse.
    - a. Harvest schedule: Open daily.
- D. High Banks: Described as the waters of the upper west passage south of a line between the seaward end of Pojac Point to the Round Rock buoy "G1" and north of a line from the seaward end of the fence between the former Davisville Navy property and Pettee Street in the Mount View section of North Kingstown to "N6" buoy located mid-bay west of Prudence Island. The area is bounded on the east by a line projecting from the easternmost end of Pier 2 at Davisville to the Round Rock buoy "G1" and is bounded to the west by the shore, in the town of North Kingstown.

1. Harvest schedule: Open daily
- E. Bissel Cove/Fox Island: Described as the waters of Bissel Cove in its entirety and adjacent waters of Narragansett Bay south of a line between Pole #275 at the corner of Waldron and Seaview Avenues and the southwestern most point of Fox Island (south of the cable area), west of a line from the southwestern most point of Fox Island to the northern most point of Rome point, in the town of North Kingstown.
1. Commercial boat harvest schedule:
    - a. December 2019: Open from 8:00AM to 12:00PM on December 11, 13, 16, 18, 20, 23, 24, 26, 30, and 31.
    - b. January through April 2020: Open 8:00AM to 12:00PM on Mondays, Wednesdays, and Fridays from January 3 through April 29.
    - c. May 1 through November 30, 2020: Closed.
    - d. Default commercial boat harvest schedule: If a previously established boat harvest schedule expires, the following default schedule shall be in effect:
      - (1) Open 8:00 AM to 12:00 on Mondays, Wednesdays, and Fridays, beginning on the second Wednesday of December through the end of April, excluding December 25 and January 1.
  2. Oyster harvest moratorium: The harvest and possession of oysters in the Bissel Cove/Fox Island Shellfish Management Area is prohibited until November 15, 2020.
- F. Mill Gut: Described as the waters of Mill Gut, lying south of the northern-most bridge on Colt Drive, in the town of Bristol.
1. Harvest schedule: Open for the harvesting of bay quahaugs, soft-shell clams, blue mussels, and oysters only between the second Wednesday in December and April 30 annually.
- G. Bristol Harbor: Described as the marine waters of Bristol Harbor and its tributaries located south of a line extending between CRMC permitted dock #419 located at 163 Poppasquash Road in the town of Bristol to and the northwest corner of the Rockwell Pier municipal parking lot in the town of Bristol; and north of a line beginning extending from the north side of CRMC Permitted Dock #1601 where it meets the shoreline, located at 363 Poppasquash Road in the town of Bristol and the northwest corner of the U.S. Coast Guard station pier in the town of Bristol.

1. Commercial boat harvest schedule:
  - a. December 2015: Closed.
  - b. Beginning January 11, 2016: Open 8:00AM to 12:00PM on Mondays, Wednesdays, and Fridays.
  - c. February 1 through April 30, 2016: Open daily.
  - d. May 1 through November 30 annually: Closed.
  - e. Default commercial boat harvest schedule: If a previously established boat harvest schedule expires, the following default schedule shall be in effect:
    - (1) January 2 through January 31: Open 8:00AM to 12:00PM on Mondays, Wednesdays, and Fridays.
    - (2) February 1 through April 30: Open daily.
    - (3) May 1 through January 1: Closed
- H. Kickemuit River: Described as the waters of the Kickemuit River north of a line connecting nun buoy 6 and can buoy 1 at Bristol Narrows.
  1. Harvest schedule: Open daily.
- I. Jenny's Creek: Described as the waters of Prudence Island including Jenny's Creek north of the inlet at Pine Hill Cove.
  1. Harvest schedule: Closed except for the harvest of bay scallops by dip-netting from a boat during the open season for bay scallops.
- J. Sakonnet River: Described as the waters north of a line from Sachuest Point to Sakonnet Light. The northern boundary is an east/west line across the Sakonnet River lying one quarter (1/4) mile south of the pipeline found just south of Black Point, so-called; the western boundary is a north/south line running from Flint Point to Taggert's Ferry, so-called, in the town of Middletown.
  1. The possession limit for surf clams is two hundred (200) bushels/vessel/day.
  2. A bycatch of one (1) bushel of bay quahaugs for each ten (10) bushels of surf clams, not to exceed twelve (12) bushels of bay quahaugs, is allowed per vessel.
- K. Point Judith Pond: Described as the waters of Point Judith Pond, including East Pond, in their entirety, in the towns of South Kingstown and Narragansett.

1. Harvest schedule: Open daily.
- L. Potter Pond: Described as the waters of Potter Pond in its entirety, west of the bridge at Succotash Road, in the town of South Kingstown.
1. Harvest schedule: Open daily.
  2. Closed area: The harvest and possession of shellfish is prohibited, except for the harvest of bay scallops by dip-net from a boat during the open season for bay scallops, in the following area: The area within Sycamore Cove defined as north of a line running easterly from a special DEM marker located at N 41 degrees 23 minutes 2.0 seconds, W 71 degrees 32 minutes 13.0 seconds; to a second special DEM marker located at N 41 degrees 23 minutes 1.0 second, W 71 degrees 31 minutes 59.5 seconds; and bound by the northern pond shoreline between the special DEM markers.
- M. Ninigret (Charlestown) Pond: Described as the waters of Ninigret Pond in its entirety, in the town of Charlestown.
1. Harvest schedule: Open daily.
  2. Western Closed area: The harvest and possession of shellfish is prohibited, except for the harvest of bay scallops by dip-net from a boat during the open season for bay scallops, in the following area: The waters within an area formed by the following points: from ("A" N 41 degrees 20 minutes 41.7 seconds W 71 degrees 41 minutes 24.3 seconds, the northeast corner of the Ninigret Conservation Area parking lot) following the shoreline to ("B" N 41 degrees 20 minutes 49.6 seconds W 71 degrees 41 minutes 4.6 seconds, a DEM sign approximately 500 meters eastward of "A"); from "B" northward to ("C" N 41 degrees 21 minutes 31.0 seconds W 71 degrees 41 minutes 22.2 seconds, the [Lavin's Ninigret](#) Landing Marina launching ramp); from "C" following the shoreline to ("D" N 41 degrees 21 minutes 10.1 seconds W 71 degrees 41 minutes 40.9 seconds, a DEM sign on the westernmost end of Reeds Point); from "D" southward to "A".
  3. Foster Cove Northern Closed Area: The harvest and possession of shellfish is prohibited in the following area: The waters within an area formed by the following points: from ("A" N 41 degrees 21 minutes 58.7 seconds, W 71 degrees 40 minutes 33.8 seconds [41°21'58.7"N, 71°40'33.8"W]) to a point 125 feet south-southeast ("B" N 41 degrees 21 minutes 57.5 seconds, W 71 degrees 40 minutes 34.4 seconds [41°21'57.5"N, 71°40'34.4"W]), to a point 275 feet east-southeast ("C" N 41 degrees 21 minutes 56.5 seconds, W 71 degrees 40 minutes 31.1 seconds [41°21'56.5"N, 71°40'31.1"W]), to a point 125 feet north-northeast ("D" N 41 degrees 21 minutes 57.8 seconds, W 71 degrees 40 minutes

30.5 seconds [41°21'57.8"N, 71°40'30.5"W], from "D" westward continuing along the shoreline to "A".

a. These areas shall remain closed until January 1, 2020, unless extended by the Director after RIMFC review.

4. Foster Cove Eastern Closed Area: The harvest and possession of shellfish is prohibited in the following area: The waters within 75 feet of shore beginning at a point ("A" N 41 degrees 21 minutes 49.3 seconds, W 71 degrees 40 minutes 24.8 seconds [41°21'49.3"N 71°40'24.8"W]) continuing along the shore to a point northwest ("B" N 41 degrees 21 minutes 52.4 seconds, W 71 degrees 40 minutes 31.0 seconds [41°21'52.4"N 71°40'31.0"W]), continuing along the shore to a point east-southeast ("C" N 41 degrees 21 minutes 51.6 seconds, W 71 degrees 40 minutes 23.6 seconds [41°21'51.6"N 71°40'23.6"W]).

a. This area shall remain closed until January 1, 2020, unless extended by the Director after RIMFC review.

N. Quonochontaug Pond: Described as the waters of Quonochontaug Pond in its entirety, in the towns of Charlestown and Westerly.

1. Harvest schedule: Open daily.

2. Closed areas:

a. Western closed area: The harvest and possession of shellfish is prohibited in the following area: Described as the waters south of a line running easterly from the special DEM marker at the end of Quahaug Point (N 41 degrees 20 minutes 0.0 seconds, W 71 degrees 44 minutes 39.5 seconds), to a second special DEM marker at the northern end of Nope's Island (N 41 degrees 20 minutes 5.0 seconds, W 71 degrees 44 minutes 1.0 second). The area will be bordered on the west by a line running south from Quahaug Point to a special DEM marker located on the barrier beach shoreline (N 41 degrees 19 minutes 50.0 seconds, W 71 degrees 44 minutes 40.0 seconds). The southern boundary will be the shoreline between the barrier beach special DEM marker and Nope's Island special DEM marker.

b. Eastern closed area: The harvest and possession of shellfish is prohibited, except for the harvest of bay scallops by dip-net from a boat during the open season for bay scallops, in the following area: Described as the waters east of a line running southerly from the special DEM marker located at N 41 degrees 21 minutes 1.1 seconds W 71 degrees 42 minutes 33.4 seconds, to a second special DEM marker located at N 41 degrees 20 minutes 41.0

seconds W 71 degrees 42 minutes 44.1 seconds; and bound by the eastern pond shoreline between the special DEM markers.

3. The harvest and possession of oysters in Quonochontaug Pond is prohibited until September 15, 2021.
- O. Winnapaug Pond: Described as the waters of Winnapaug Pond in its entirety, in the town of Westerly.
1. Harvest schedule: Open daily.
  2. Closed Area: The harvest and possession of shellfish is prohibited, except for the harvest of bay scallops by dip-net from a boat during the open season for bay scallops, in the following area: Described as the waters north of a line running easterly from a special DEM marker at Big Rock Point (N 41 degrees 19 minutes 49.0 seconds, W 71 degrees 47 minutes 57.0 seconds), to the special DEM marker at the southern end of Larkin's Island (N 41 degrees 19 minutes 55.0 seconds, W 71 degrees 47 minutes 5.0 seconds). The area will be bordered on the east by a line running northwesterly the Larkin's Island special marker to a special DEM marker adjacent to the end of Bayside Avenue (N 41 degrees 19 minutes 58.0 seconds, W 71 degrees 47 minutes 9.0 seconds). The northern boundary is the shoreline between the Bayside Ave special DEM marker and the Big Rock Point special DEM marker.
- P. Green Hill Pond: Described as the marine waters of Green Hill Pond and its tributaries in its entirety, in the towns of South Kingstown and Charlestown.
1. Harvest schedule: Closed except for the harvest of bay scallops by dip-netting from a boat during the open season for bay scallops.
- Q. Narrow River: Described as the marine waters of the Narrow River in its entirety, in the towns of Narragansett, South Kingstown, and North Kingstown.
1. Harvest schedule: Closed except for the harvest of bay scallops by dip-netting from a boat during the open season for bay scallops.
- R. Little Narragansett Bay and Pawcatuck River: Described as the marine waters of Little Narragansett Bay and Pawcatuck River within the State of Rhode Island which are northeast of a line from the DEM range marker on a pole (Latitude 41.3217 ° N, Longitude 71.8787 ° W) near the southeastern extremity of Sandy Point to a DEM range marker on a pole (Latitude 41.3103 °, Longitude 71.8775 ° W) on the northern shoreline of Napatree Point, including all waters of the "Kitchen" so called, and those waters northeast of the southwest shoreline of Sandy Point to the state line. Harvesters should refer to the above latitudes and longitudes for the closure line if the range markers and or poles are no longer present.

1. Harvest schedule: Closed except for the harvest of bay scallops by dip-netting from a boat during the open season for bay scallops.
- S. Providence and Seekonk Rivers: Described as the marine waters of the Providence River and Seekonk River and their tributaries located north of a line extending from the flagpole (Latitude: 41° 43' 2.93" North, Longitude: 71° 21' 27.68" West) located at Conimicut Point in the city of Warwick and the center of the Old Tower at Nayatt Point; and southerly and seaward of the Hurricane barrier in the city of Providence; and southerly and seaward of the Main Street Dam in the city of Pawtucket.
1. Harvest schedule: Closed except for the harvest of bay scallops by dip-netting from a boat during the open season for bay scallops.
- T. Warren River Shellfish Management Area: Described as the marine waters of the Warren River and its tributaries located north and east of a line extending from the flagpole at 178 Adams Point Road on Adams Point in Barrington to the DEM range marker at Jacobs Point; and southerly and downstream of the Main street/Route 114 bridge at its intersection with the Barrington River in the town of Barrington; and southerly and downstream of the Main street/Route 114 bridge at its intersection with the Palmer River in towns of Bristol and Warren.
1. Harvest schedule: Closed except for the harvest of bay scallops by dip-netting from a boat during the open season for bay scallops.
- U. Town Pond: Described as the marine waters of Founders Brook and Town Pond in their entirety, in the town Portsmouth.
1. Harvest schedule: Closed except for the harvest of bay scallops by dip-netting from a boat during the open season for bay scallops.
- V. Jacobs Point Shellfish Management Area: Described as the marine waters of the Warren River south of a line extending from the DEM range marker on the shore north of Jacobs Point, located at 71°17'12.104"W, 41°42'51.541"N, to nun buoy 12; and east of a line extending from nun buoy 12 to the DEM range marker on the shore south of Jacobs Point, located at 71°17'28.61"W, 41°42'36.91"N.
1. Harvest schedule: Open daily.
  2. The reduced Shellfish Management Area possession limit applies only to oysters. The commercial possession limit for oysters is one (1) peck per person per day.

#### **4.13 Wet Storage of Shellfish**

No person shall engage in wet storage of molluscan shellfish without first obtaining a dealer's license from DOH and DEM.

#### **4.14 Commercial Handling of Shellfish**

- A. Commercial shellfishermen shall conduct all activities and operations involving or relating to the possession and handling of shell stock so as to prevent contamination, deterioration and decomposition of such shell stock.
- B. Containers used for storing shell stock must be clean.
- C. Boat decks and storage bins used in the harvest or transport of shell stock shall be kept clean with potable water or water from the growing area in approved classification or the open status of conditional areas.
- D. Commercial shellfishermen using a vessel to harvest and transport shell stock shall assure that said vessel is properly constructed, operated and maintained to prevent contamination, deterioration and decomposition of shell stock.
- E. Commercial shellfishermen using a vessel to harvest and transport shell stock shall prevent bilge water from coming into contact with shell stock.
- F. Commercial shellfishermen using a boat to harvest and transport shell stock shall provide such vessel with effective drainage to avoid contact between bilge water and shell stock.
- G. Commercial shellfishermen using a vessel to harvest and transport shell stock shall locate bilge pumps so that discharge shall not contaminate shell stock.
- H. Shell stock shall be washed reasonably free of bottom sediments as soon after harvesting as possible. The harvester shall be primarily responsible for washing shell stock. If shell stock washing is not feasible at the time of harvest, the dealer shall assume this responsibility. Water used for washing shall be from a potable water source, or growing area in the approved classification or open status of the conditionally approved classification.
- I. The discharge of human sewage from a vessel used in the harvesting of shell stock, or from vessels that buy shell stock, within waters of the state is prohibited.

#### **4.15 Commercial Tagging of Shellfish**

- A. Commercial shellfishermen must place any and all shellfish taken by them (except those shellfish returned to the waters of the harvest area) into containers, and must tag each and every container with a "harvester tag" conforming to the requirements of this sub-section, prior to shellfish being placed in the container.
- B. The harvester tag shall be durable, waterproof, and sanctioned by the R.I. Department of Health. The tag shall contain the following indelible, legible information in the order specified as follows: The harvester's identification number as assigned by DEM; the date of harvest; the harvest commencement time; the harvest location as identified on the R.I. Shellfish Harvest Area Tagging

Map; the shellfish management area; the type (species) of shellfish; and the approximate quantity of shellfish. The harvest commencement time will indicate the time that the first shellfish that the harvester is currently in possession of was removed from the water and should be the same for all shellfish that the harvester is in possession of regardless of tagging area.

- C. Each tag shall also carry the following statement in bold capitalized type: "This tag is required to be attached until container is empty or it retagged and thereafter kept on file for 90 days". Commercial shellfishermen shall not place shell stock harvested from more than one growing area into the same container. When the harvester is also a dealer, the harvester has the option to tag the shell stock with a harvester tag or a dealer's tag meeting the requirements of the RIDOH regulations.
- D. Bulk tagging of shell stock will be permitted only with prior approval of the Director under the following criteria:
  - 1. When shell stock are harvested from one harvest area on a single day, multiple containers may be utilized on a wrapped pallet, in a tote, in a net brailer, or other container and the unit tagged with a single tag; and,
  - 2. A statement that all shell stock containers in this lot have the same harvest data and area of harvest; and number of containers in the unit.

#### **4.16 Commercial Temperature Control of Shellfish**

- A. Commercial shellfishermen shall not allow shell stock to deteriorate or decompose from exposure to excessive temperature and shall deliver shell stock to a licensed dealer before such deterioration or decomposition occurs.
- B. Harvest of shellfish from sunrise November 1 through sunset March 31 annually: The maximum allowable time between the commencement of harvest of shell stock and delivery to a dealer shall be twenty hours. Possession of shell stock in excess of 20 hours is prohibited.
- C. Harvest of shellfish from sunrise April 1 through sunset October 31 annually: The maximum allowable time between the commencement of harvest of shell stock and delivery to a dealer shall be 10 hours. Possession of shell stock in excess of 10 hours is prohibited.
  - 1. The harvester shall provide shading to all shellfish intended for harvest aboard vessels and during land-based deliveries.
  - 2. Harvest of quahogs or oysters from within Designated Temperature Control Areas that exceed five hours to complete shall be placed in mechanical refrigeration or adequately iced in a storage container within five (5) hours of the commencement of harvest until the shellfish are transferred to a licensed dealer within 10 hours.

- D. Ocean quahaugs, surf clams, and whelks are exempt from temperature control requirements.

#### **4.17 Shellfish Transplant Regulations**

- A. The Director is authorized and directed, after requiring all necessary safeguards, to transfer shellfish from uncertified waters of the State to approved areas. The Director may make Rules and Regulations governing the re-harvest of those shellfish to the best economic benefit of the state after all necessary safeguards to insure their cleanliness (R.I. Gen. Laws § 20-6-26).
- B. Any person participating in the transplant program shall surrender his commercial license to the conservation officer or ~~DFW~~ DEM employee afloat on the transplant bed or otherwise stationed to collect licenses. The license must be surrendered before the participant commences digging shellfish.
- C. The boundaries of the transplanting area shall be marked with designated corner markers. All shellfishermen participating in the transplant program shall harvest shellfish only within the boundaries of the transplant area so marked.
- D. No shellfisherman shall commence harvesting shellfish in the transplant area before the hour at which the transplant program is scheduled to commence. Hours of transplanting shall be publicized in advance.
- E. Shellfishermen participating in the transplant program shall bring no shellfish into the transplant area before beginning the transplant. Any shellfish on board a participant's boat shall be considered transplant shellfish, dug from the transplanting area.
- F. Any participant in the transplant program shall be considered to have completed his participation in the program when he presents his shellfish to the "buy boat/buy station" for counting/weighing. If the method of transplanting involves diggers planting their own catch in the transplant bed, the shellfisherman shall first present his catch to the authorized DEM officer for counting/weighing, and shall then proceed directly to the planting area. Once the shellfisherman commences to remove the shellfish from his boat to the "buy boat/buy station" or into the transplant bed, he shall remove all shellfish from his boat before changing location. Any change of location shall indicate that the shellfisherman has cleared his boat of shellfish and is ready for inspection and return of license by DEM officers. No shellfish shall be aboard any participant's boat at the time of inspection.
- G. Temporary creation of a transplanting area shall in no way affect the polluted status of the waters therein, or of any waters surrounding the transplanting area and declared polluted.

- H. Violation of any of these provisions shall be punishable by a fine of up to \$500 and/or up to 30 days in jail.
- I. Agents of the DEM may limit the maximum allowable harvest by each participant in a transplant. Agents of the DEM may limit the number of participants in a shellfish transplant program provided that the limit is determined in a fair and equitable manner (R.I. Gen. Laws § 20-6-29).
- J. Dredging, Raking, and Tonging in Transplant Beds: Those areas to which the shellfish are transferred shall be marked out, and dredging, raking, or tonging on them shall be prohibited except under the special direction of the Director (R.I. Gen. Laws § 20-6-27).

#### 4.18 Commercial Whelk Pot Tagging:

- A. Applicability: No person shall set, haul, or maintain a whelk pot unless the pot has attached a valid whelk pot tag issued by the Director.
- B. Application for whelk pot tags shall be made on forms as prescribed by the Director.
- C. Cost of tags shall be borne by the license holder and shall not exceed the cost of producing such tags by the vendor(s) selected by the Department.
- D. Tags shall be permanently attached to the pot in a location clearly visible for inspection.
- E. Tags shall be valid on an annual basis from September 1 through August 31.
- F. No person shall transfer whelk pot tags between whelk pots, or between individuals or vessels.
- G. No person shall possess at any one time more whelk pot tags than are authorized.
- H. Only tags for the current fishing year and the immediate previous or following fishing year shall be allowed to remain attached to each whelk pot.
- I. Pot tag types and issuance:
  - 1. Original tags: Eligible license holders may order up to the maximum pot limit plus a 10% over-allotment to allow for replacement of tags due to routine losses. When a routine loss of an original tag occurs, the 10% over-allotment shall be used to replace the lost tag.
  - 2. Gear rotation tags: Eligible license holders may order additional tags to be used for gear rotation and maintenance. The number of gear rotation tags issued shall not exceed the maximum pot limit or exceed the number of

original tags ordered. Gear rotation tags shall be held by the Director. The Director shall issue gear rotation trap tags on a one-for-one basis upon receipt of the original tags.

3. Catastrophic loss tags: Eligible license holders may order up to two (2) complete sets of catastrophic loss trap tags, in an amount equal to the number of original tags ordered, to be used in the event of catastrophic loss or to replace original trap tags not received.
  - a. Catastrophic loss trap tags ordered shall be held by the Director.
  - b. Issuance of catastrophic loss tags shall null and void original and gear rotation tags issued. No original tag issued may be used upon issuance of catastrophic trap tags.
  - c. Catastrophic loss trap tags shall be distinguishable from original trap tags (i.e. color).

**RHODE ISLAND GOVERNMENT REGISTER  
PUBLIC NOTICE OF PROPOSED RULEMAKING**

**DEPARTMENT OF ENVIRONMENTAL MANAGEMENT**

**Title of Rule:** PART 12 – Research Pilot Aggregate Program (250-RICR-90-00-12)

**Rule Identifier:** 250-RICR-90-00-12

**Rulemaking Action:** Proposed Amendment

**Important Dates:**

Date of Public Notice: 10/30/2019

Hearing Date: 11/12/2019

End of Public Comment: 11/29/2019

**Authority for this Rulemaking:**

R.I. Gen. Laws Title 20, R.I. Gen. Laws Chapters 42-17.1, 42-17.6, and 42-17.7, and in accordance with R.I. Gen. Laws Chapter 42-35-18(b)(5), Administrative Procedures Act, as amended

**Summary of Rulemaking Action:**

1. **Section 12.7.2(B)**: Proposal to reduce eligibility requirement for historical record of landing summer flounder.
2. **Section 12.7.2(C)**: Proposal to increase number of participating vessels in the program.
3. **Section 12.7.2(I)**: Proposal to amend the application period.
4. **Sections 12.7.2(A) and 12.7.7**: Proposal to extend program through 2021.

**Additional Information and Comments:**

All interested parties are invited to request additional information or submit written or oral comments concerning the proposed amendment until November 29, 2019 by contacting the appropriate party at the address listed below:

Peter Duhamel  
Department of Environmental Management  
3 Fort Wetherill Road  
Jamestown, RI 02835  
peter.duhamel@dem.ri.gov

**Public Hearing:**

A public hearing, in accordance with R.I. Gen. Laws § 42-35-2.8, to consider the proposed amendment shall be held on November 12, 2019 at 6:00 pm at URI Bay Campus, Corless Auditorium, South Ferry Road, Narragansett, RI 02882 at which time and place all persons interested therein will be heard. The seating capacity of the room will be enforced and therefore the number of persons participating in the hearing may be limited at any given time by the hearing officer, in order to comply with safety and fire codes.

The place of the public hearing is accessible to individuals who are handicapped. If communication assistance (readers/interpreters/captioners) is needed, or any other accommodation to ensure equal participation, please call 401-423-1927 or RI Relay 711 at least three (3) business days prior to the meeting so arrangements can be made to provide such assistance at no cost to the person requesting.

**Regulatory Analysis Summary and Supporting Documentation:**

In the development of the proposed amendment consideration was given to: (1) alternative approaches; (2) overlap or duplication with other statutory and regulatory provisions; and (3) significant economic impact on small business. No alternative approach, duplication, or overlap was identified based upon available information.

For full regulatory analysis or supporting documentation see agency contact person above.

**Public Hearing**  
**November 12, 2019**

**Proposed/annotated amendments**

Note: Proposed new language is identified as red underline; proposed language to be deleted is identified as ~~red-stricken~~.

**250-RICR-90-00-12**

**TITLE 250 – DEPARTMENT OF ENVIRONMENTAL MANAGEMENT**

**CHAPTER 90 – MARINE FISHERIES**

**SUBCHAPTER 00 – N/A**

PART 12 – Research Pilot Aggregate Program

**12.1 Purpose**

The purpose of the program will be to assess the effectiveness and viability of an aggregate landings approach as an alternative to traditional daily possession limit quota management in the commercial summer flounder and black sea bass fisheries.

**12.2 Authority**

These rules and regulations are promulgated pursuant to R.I. Gen. Laws Title 20, R.I. Gen. Laws Chapters 42-17.1, 42-17.6, and 42-17.7, and in accordance with R.I. Gen. Laws § 42-35-18(b)(5), Administrative Procedures Act, as amended.

**12.3 Application**

The terms and provisions of these Rules and Regulations shall be liberally construed to permit the Department to effectuate the purposes of state law, goals, and policies.

**12.4 Definitions**

See Rhode Island Marine Fisheries Regulations, [Part 1](#) of this Subchapter.

**12.5 Severability**

If any provision of these Rules and Regulations, or the application thereof to any person or circumstances, is held invalid by a court of competent jurisdiction, the

validity of the remainder of the Rules and Regulations shall not be affected thereby.

## 12.6 Superseded Rules and Regulations

On the effective date of these Rules and Regulations, all previous Rules and Regulations, and any policies regarding the administration and enforcement of these regulations shall be superseded. However, any enforcement action taken by, or application submitted to, the Department prior to the effective date of these Rules and Regulations shall be governed by the Rules and Regulations in effect at the time the enforcement action was taken, or application filed.

## 12.7 Regulations

### 12.7.1 Applicability.

A group of vessels will be selected through an application process established herein to implement a pilot program to gather data on aggregate limits and their effect on harvest rates and quotas for the commercial summer flounder and black sea bass fisheries.

### 12.7.2 Eligibility.

- A. Persons must hold a valid commercial fishing license in Rhode Island and be the owner and/or operator of a vessel that is licensed to harvest and land summer flounder and black sea bass in state waters and must remain so licensed ~~for the entirety of 2018~~ through 2021.
- B. Applicant vessels must have a historical record of landing summer flounder and black sea bass as recorded in SAFIS ~~dating back to at least 2014~~ for a minimum of one (1) year.
- C. Up to ~~three (3)~~ six (6) participating vessels from each of the following gear types will be selected for participation: gill net, otter trawl, rod and reel, fish pot, lobster pot, multi-gear fisher.
- D. Applicant vessels shall agree to install a Division approved vessel monitoring system (VMS) device on their vessel. The cost of such vessel monitoring device shall be the responsibility of the participant.
- E. Applicant vessels shall agree to submit catch and effort information through a Division approved electronic application. The cost of such application shall be the responsibility of the participant.
- F. Applicant vessels shall agree to allow the Department to publicly disclose all landings of summer flounder and black sea bass on a single-vessel resolution basis.

- G. Applicant vessels shall agree to take any state or federally authorized observers at any time.
- H. Application required. Eligible persons must apply on forms as prescribed by the Director.
- I. Application period: Applications must be received ~~no later than November 30, 2018~~ between January 1 and March 30 annually.

### **12.7.3 Approval Process.**

- A. Evaluation criteria: All permit applications submitted to the Division will be reviewed and assessed by the Director for completeness and accuracy.
- B. If the number of eligible applicants by gear type category exceeds the number of permits available, the applicants will be selected for participation through a lottery process.
- ~~C. The Department will make every effort to complete the application review process during the month of December, 2018 and issue permits by January 1, 2019.~~

### **12.7.4 Permit Conditions.**

- A. Vessel monitoring system devices and reporting applications shall be maintained in operational order and be actively engaged at all times when fishing. Malfunctioning of any device will result in permit suspension until the device is returned to operational order.
- B. Each participant shall submit catch and effort information through the Division approved electronic application with each landing event.
- C. All participating vessels shall take any state or federally authorized observers at any time.
- D. All license/permit holders and vessels participating in the pilot program must adhere to all applicable rules and regulations governing commercial fishing operations, including but not limited to mesh size restrictions, offloading hours, at-sea transfers, and reporting and record-keeping requirements. All license/permit holders and participating vessels will be subject to all State and Federal small mesh landing levels for summer flounder when fishing with small mesh. All license/permit holders and participating vessels will be allowed to fish south of the Southern New England DDAS counting area for summer flounder when properly enrolled in the Small Mesh Exemption Program.
- E. Permits are non-transferable. Only vessels authorized by the Director may participate in the pilot program during 2019.

### **12.7.5 Possession Limits.**

- A. The weekly possession limit for summer flounder and black sea bass will be equal to the daily limit for each species multiplied by the number of open days as set forth in [Part 3](#) of this Subchapter.
- B. The weekly periods for the duration of the program will be issued explicitly by the Division to each participant. Alternate weekly periods will not be authorized.
- C. If at any point during any sub-period for either species, the Division may terminate the program to prevent an early closure.

### **12.7.6 Compliance and Enforcement.**

- A. Failure to adhere to any of the terms and conditions will result in permit revocation for the remainder of the pilot program duration.
- B. Participating vessels which cease to participate, or are expelled from, the program will be prohibited from harvesting and landing summer flounder and black sea bass in an aggregate amount for the ~~duration remainder of 2019~~ the pilot program duration.
- C. If a participant exceeds their weekly aggregate limit for either species, or if the participating vessel is found to be in violation of any of the terms and conditions set forth in these regulations, the participant's permit will be revoked and will be subject to potential enforcement action, including but not limited to: confiscation of catch, prohibition on the harvest and landing of summer flounder and black sea bass for the remainder of the year, license and/or permit suspension or revocation, fines, and disqualification from participation in any future alternative management programs. All penalty provisions applicable to violations of marine fisheries laws and regulations will also be applicable to participants in the pilot program.

### **12.7.7 Term of program**

These regulations will remain in effect ~~for 2019 through 2021~~ only, after which it will be subject to review and evaluation, with a view to developing recommendations for ~~moving forward in 2020~~ continuance of program beyond 2021 and thereafter.

**RHODE ISLAND GOVERNMENT REGISTER  
PUBLIC NOTICE OF PROPOSED RULEMAKING**

**DEPARTMENT OF ENVIRONMENTAL MANAGEMENT**

**Title of Rule:** PART 13 – Cooperative Multi-State Possession and Landing Pilot Program for Summer Flounder

**Rule Identifier:** 250-RICR-90-00-13

**Rulemaking Action:** Proposed Adoption

**Important Dates:**

Date of Public Notice: 10/30/2019

Hearing Date: 11/12/2019

End of Public Comment: 11/29/2019

**Authority for this Rulemaking:**

R.I. Gen. Laws § R.I. Gen. Laws Title 20, R.I. Gen. Laws Chapters 42.17.1, 42-17.6, and 42-17.7, and in accordance with R.I. Gen. Laws Chapter 42-35, Administrative Procedures Act

**Summary of Rulemaking Action:**

1. Rule designed to increase efficiency of fishing operation by allowing qualifying commercial fishers to simultaneously carry possession limits for, and land summer flounder in cooperating states during the same fishing trip.
2. Applicable to the Winter 1 sub-period only (January - April)
3. Applicants must be licensed or otherwise authorized to possess and/or land summer flounder in at least one cooperating state.
4. Applicants must have no convictions for violations, state or federal, to commercial fishing regulations or laws within the past three (3) years.
5. Applicant vessels must be permitted by NOAA Fisheries to possess and/or land summer flounder harvested from federal waters.
6. Summer flounder catch intended for landing in Rhode Island and any cooperating state(s) must be stored separately with port identified.

**Additional Information and Comments:**

All interested parties are invited to request additional information or submit written or oral comments concerning the proposed adoption until November 29, 2019 by contacting the appropriate party at the address listed below:

Peter Duhamel  
Department of Environmental Management  
3 Fort Wetherill Road  
Jamestown, RI 02835  
peter.duhamel@dem.ri.gov

**Public Hearing:**

A public hearing, in accordance with R.I. Gen. Laws § 42-35-2.8, to consider the proposed adoption shall be held on November 12, 2019 at 6:00 pm at URI Bay Campus, Corless Auditorium, South Ferry Road, Narragansett, RI 02882 at which time and place all persons interested therein will be heard. The seating capacity of the room will be enforced and therefore the number of persons participating in the hearing may be limited at any given time by the hearing officer, in order to comply with safety and fire codes.

The place of the public hearing is accessible to individuals who are handicapped. If communication assistance (readers/interpreters/captioners) is needed, or any other accommodation to ensure equal participation, please call 401-423-1927 or RI Relay 711 at least three (3) business days prior to the meeting so arrangements can be made to provide such assistance at no cost to the person requesting.

**Regulatory Analysis Summary and Supporting Documentation:**

In the development of the proposed amendment consideration was given to: (1) alternative approaches; (2) overlap or duplication with other statutory and regulatory provisions; and (3) significant economic impact on small business. No alternative approach, duplication, or overlap was identified based upon available information.

For full regulatory analysis or supporting documentation see agency contact person above.

250-RICR-90-00-XX

## TITLE 250 – DEPARTMENT OF ENVIRONMENTAL MANAGEMENT

### CHAPTER 90 – MARINE FISHERIES

#### SUBCHAPTER 00 – N/A

PART 13 – Cooperative Multi-State Possession and Landing Pilot Program for Summer Flounder

#### 13.1 Purpose

The purpose of these regulations is to authorize a program, entered into cooperatively by the Director and other states, which will increase the efficiency of the commercial summer flounder fishery by allowing certain eligible and qualifying commercial fishers to simultaneously carry possession limits for, and land summer flounder in cooperating states during the same fishing trip.

#### 13.2 Authority

These Rules and Regulations are promulgated pursuant to R.I. Gen. Laws Title 20, R.I. Gen. Laws Chapters 42-17.1, 42-17.6, and 42-17.7, and in accordance with R.I. Gen. Laws Chapter 42-35, Administrative Procedures Act.

#### 13.3 Application

The terms and provisions of these Rules and Regulations shall be liberally construed to permit the Department to effectuate the purposes of state law, goals, and policies.

#### 13.4 Definitions

See Rhode Island Marine Fisheries Regulations, Part 1 of this Chapter.

#### 13.5 Severability

If any provision of these Rules and Regulations, or the application thereof to any person or circumstances, is held invalid by a court of competent jurisdiction, the validity of the remainder of the Rules and Regulations shall not be affected thereby.

#### 13.6 Superseded Rules and Regulations

On the effective date of these Rules and Regulations, all previous Rules and Regulations, and any policies regarding the administration and enforcement of

these regulations shall be superseded. However, any enforcement action taken by, or application submitted to, the Department prior to the effective date of these Rules and Regulations shall be governed by the Rules and Regulations in effect at the time the enforcement action was taken, or application filed.

### **13.7 Applicability**

- A. This program is limited to Rhode Island and cooperating states. “Cooperating states” is defined as states other than Rhode Island that enacted rules authorizing commercial fishermen licensed by that state to participate in this program, and that have reached an agreement with the Director of intent to cooperatively participate in this Program.
- B. Permit holders shall be authorized to possess a multi-state possession limit. A “multi-state possession limit” is defined as the sum of the commercial summer flounder possession limit for Rhode Island waters and the current commercial summer flounder possession limits for cooperating states within which the permit holder is authorized to participate.
- C. This program is limited to the federal Winter Period 1 (January 1 through April 30). This program is subject to annual review and re-authorization by the Director.

### **13.8 Eligibility**

- A. Applicants must hold a valid commercial fishing license or landing permit issued by the Director authorized to possess and/or land Summer flounder.
- B. Applicant vessels must be commercial declared pursuant to Part 2 of this Chapter.
- C. Applicants must be licensed or otherwise authorized to possess and/or land summer flounder in at least one cooperating state.
- D. Applicants must not have been assessed a criminal or administrative penalty for violations of state commercial fishing regulations or laws within any cooperating state, or for violations of federal commercial fishing regulations or laws, within the past three (3) years.
- E. Applicants are in compliance with commercial fishing data reporting requirements pursuant to Part 2 of this Chapter.
- F. Application required. Eligible persons must apply on forms as prescribed by the Director. Applications not completed in their entirety shall not be considered.
- G. Applicant vessels must be permitted by NOAA Fisheries to possess and/or land summer flounder harvested in federal waters.

## **13.9 Permit Conditions**

- A. All license/permit holders and participating vessels must adhere to all applicable rules and regulations governing commercial fishing operations, including but not limited to mesh size restrictions, offloading hours, at-sea transfers, and reporting and record-keeping requirements. All license/permit holders and participating vessels will be subject to all State and Federal small mesh landing levels for summer flounder when fishing with small mesh. All license/permit holders and participating vessels will be allowed to fish south of the Southern New England declared day at sea (DDAS) counting area for summer flounder when properly enrolled in the Small Mesh Exemption Program.
- B. Program participants must maintain proof of privilege to land summer flounder in cooperating states as applicable.
- C. To be eligible to land in Rhode Island with a multi-state summer flounder possession limit on board, the fisherman shall have on board official documentation verifying their authorization to participate in the program of any cooperating state(s) in which the fisherman intends to land the remainder of the multi-state possession limit.
- D. Permits are valid only for the calendar year issued.
- E. Program participants may only retain their multi-state possession limit when fishing on a permitted vessel associated with that Program participant's authorization.
- F. Summer flounder may be landed between the hours of 6:00 AM to 8:00 PM only, consistent with Part 3 of this Chapter.
- G. Summer flounder catch intended for landing in Rhode Island and any cooperating state(s) shall be stored such that the catch intended for each state is physically separated; catch intended for each state must be stored in separate totes and identified with a written sign as to the intended port of landing.
- H. Program participants intending to land summer flounder in Rhode Island must call the Division of Law Enforcement (401-222-3070) at least two (2) hours prior to landing, and provide intended port and facility of landing, estimated time of landing, total weight of summer flounder to be landed in Rhode Island, and intended ports of landing and total weight for any summer flounder to be landed in cooperating states.

## **13.10 Compliance and Enforcement**

- A. The Director may revoke, in writing, the authorization to participate in this Program, should the Director determine that such Program participant:

  - 1. Has violated any permit condition specified in this rule.

2. Has been assessed a criminal or administrative penalty for violations of state commercial fishing regulations or laws within any cooperating state, or for violations of federal commercial fishing regulations or laws, within the past three (3) years.
  2. Did not report landings pursuant to Part 2 of this Chapter.
  3. Exceeded the multi-state possession limit that the Program participant is authorized to possess.
  4. Violated any provision of R.I. Gen. Laws Title 20 – Fish and Wildlife, or any Marine Fisheries Regulation of Rhode Island State Agencies promulgated thereunder including but not limited to this section; or
  5. Has had program privileges revoked by a cooperating state.
- B. In the event that a Program participant's privileges are revoked, the permitted vessel associated with that program participant's authorization is no longer eligible to participate in this Program upon receipt of privilege revocation.
- C. Any Program participant whose Program privileges are revoked by the Director may submit an appeal within thirty (30) days of receipt of revocation notice to the Director asking to be heard in accordance with R.I. Gen. Laws Chapter 42-17.7 and pursuant to Part 10-00-1 of this Title, Rules and Regulations for the Administrative Adjudication Division concerning reconsideration for eligibility in this Program. Such appeal shall be limited to taking factual issue regarding one or more allegations provided by the Director for revocation, as provided in sections 1.10(A)(1) to (5), inclusive, of this Part. Should the Director deem that the revocation of Program privileges was for due cause, the former Program participant may not apply for re-admittance into this Program for a period of five years from the date of revocation.

### **13.11 Term of program**

These regulations will remain in effect for 2020 only, after which it will be subject to review and evaluation, with a view to developing recommendations for moving forward in subsequent years.

# Shellfish Advisory Panel

September 25, 2019; 4:30PM

URI Bay Campus, Coastal Institute Building, Large Conference Room  
218 S Ferry Road, Narragansett, RI 02874

## MEETING SUMMARY

RIMFC members: K. Eagan (Chair)

DEM: A. Gerber-Williams, C. McManus, P. Duhamel, J. Lake;

Scientific Advisor: D Leavitt;

SAP members: M. McGiveney, M. Sousa, G. Schey, R. Tellier, J. Gardner;

Public: J. McDonald, D. Eagan, T. Dasilva, L. Frattarelli, K. Murgo;

### 1. Discussion and/or recommendations regarding winter harvest schedules for Greenwich Bay, Bissel Cove, and Bristol Harbor Shellfish Management Areas:

- Greenwich Bay sub-areas 1 and 2: A. Gerber-Williams provided a brief explanation of the default winter harvest schedule for the Greenwich Bay Shellfish Management Areas. **Motion made by M. McGiveney to open additional harvest days from 8:00A.M – 12:00P.M. on Tuesday December 24<sup>th</sup>, Thursday December 26<sup>th</sup>, and Tuesday December 31<sup>st</sup>; 2<sup>nd</sup> by G. Schey. The motion passed with a unanimous vote of 5-0.**
- Bissel Cove: A. Gerber-Williams provided a brief explanation of the default winter harvest schedule for the Bissel Cove Shellfish Management Area. **Motion made by M. McGiveney to open additional harvest days from 8:00A.M – 12:00P.M. on Tuesday December 24<sup>th</sup>, Thursday December 26<sup>th</sup>, and Tuesday December 31<sup>st</sup>; 2<sup>nd</sup> by G. Schey. The motion passed with a unanimous vote of 5-0.**
- Bristol Harbor: A. Gerber-Williams provided a brief explanation of the default winter harvest schedule for the Bristol Harbor Shellfish Management Area. **Motion made by M. McGiveney to not alter the default schedule; 2<sup>nd</sup> by G. Schey. The motion passed with a unanimous vote of 5-0.**

A. Gerber-Williams presented quahog landing data of direct counts collected in each of the shellfish winter harvest management areas going back to 2011. G. Schey recommended collapsing Greenwich Bay Management Areas 2A and 2B into one tagging area because of how small each area is and their proximity to each other.

### 3. Presentation on Whelk Pot Tagging.

*J. Lake* presented the proposed whelk pot tagging program, which would adopt a similar tag program to lobster with 300 tags per fisherman plus 10% routine loss provision for a total of 330 tags. In addition, gear rotation and catastrophic loss tags could be purchased twice a year with tags valid between September 1- August 31 annually. *D. Eagan* recommended that 20% routine loss and tag purchasing during the spring would be preferable. The list of motions on the topic are listed below:

- **Motion made by J. Gardner to adopt the whelk pot tagging program; 2<sup>nd</sup> by G. Schey. The motion passed with a unanimous vote of 5-0.**
- **Motion made by J. Gardner to allow 300 tags per fisherman; 2<sup>nd</sup> by G. Schey. The motion passed with a unanimous vote of 5-0.**
- **Motion made by G. Schey to allow 400 traps per fisherman on a single boat with 10% tag routine loss provision; 2<sup>nd</sup> M. Sousa. K. Murgo did not agree with only allowing 1 license per boat. The motion tied with 1 vote in favor and 1 vote to object and 3 abstentions.**
- **Motion made by G. Schey to allow 300 tags per fisherman with 15% routine loss provision, gear rotation and catastrophic loss tags, and that tags be available for purchase April 1<sup>st</sup>; 2<sup>nd</sup> J. Gardner. The motion pass with a unanimous vote of 5-0.**

*Prepared by: A. Gerber-Williams*



## ATLANTIC OFFSHORE LOBSTERMEN'S ASSOCIATION

Grant Moore, President  
[exec@offshorelobster.org](mailto:exec@offshorelobster.org)

David Borden, Executive Director  
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October 15, 2019

Jason McNamee, Chief Marine Fisheries  
RI Division of Fish and Wildlife  
Jamestown, RI 02835-9906

Dear Jason:

I would like to comment on behalf of the Atlantic Offshore Lobstermen's Association regarding black sea bass (BSB) regulations and aggregate programs in advance of the October 16, 2019 prehearing workshop.

As you know our members participate in the BSB fishery during the fall, winter and spring periods. As noted in my prior letters on this issue (enclosed), the majority of sea bass caught by RI fishermen during the period of September through April are caught in federal waters, as an unavoidable bycatch in other fisheries, and generally at depths greater than 100 feet. Since most of these fish are caught in deep water, they suffer barotrauma with a low and questionable probability of survival if released. The 2019 BSB stock update and actions, presented at the recent Mid-Atlantic Council meeting, reduced the allowable commercial catch 36% because of discards.

As noted in my earlier letters, a properly structured aggregate program can convert some portion of these discards into landings, improving the economic performance of the RI fishery during the fall and winter/spring period. The current daily possession regulation in the fall period promotes discarding; these discards could be reduced with a simple change in regulations. Ideally the entire period from October through April would be regulated with weekly aggregate regulations. The proposed quota increase gives us a good opportunity to address this issue. I have no doubt that this recommendation is also in the best interests of the trawl and gillnet fisheries.

Regarding an aggregate program, we have one member participating in the pilot program and the results have been very successful at converting unavoidable discards to landing. To date, I have not heard of any negatives associated with this pilot. I therefore urge a continuation of this program and, if possible, an expansion of the number of participants. Greater participation would further test the concept and provide more data on which to base decisions. This is the perfect time to test the concept with a larger group, as the quotas for summer flounder, black sea bass, and scup remain robust.

Thanks for the opportunity to comment.

David Borden  
Executive Director

Cc: John Peabody, AOLA Member, Lady Clare Inc.  
Grant Moore, AOLA President, Broadbill Fishing Inc.



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[dborden@offshorelobster.org](mailto:dborden@offshorelobster.org)

October 8, 2017

Jason McNamee, Chief Marine Fisheries  
RI Division of Fish and Wildlife  
Jamestown, RI 02835-9906

Dear Jason:

Over the last several years I have submitted multiple letters (attached) urging the Department to adopt a seasonal, and/or, year-round aggregate landing program for sea bass. The logic for such is detailed in the enclosed letters, but briefly it is to reduce regulatory discards and improve the economic return for the Rhode Island fishing industry.

Sea bass are an unavoidable bycatch in the offshore lobster fishery, and the bycatch issue is increasing in nearshore areas with the expansion of the sea bass population. It is now even a common circumstance for inshore lobstermen to have high encounter rates in their lobster traps and the low daily possession regulations simply promote discarding. There is no reason to continue this management practice, as there are alternative strategies that would avoid this problem.

As recommended in my prior correspondence, I believe adoption of a properly structured weekly aggregate program could convert some of the dead discards to landings, particularly for vessels that make multi-day trips or vessels with high catch rates. The spring aggregate program adopted by the Department for sea bass has proven the merits of this strategy, and I believe it should be extended throughout the year. I believe this to be a prudent and conservative change, which has as its basis the proper stewardship of the resource.

I am, therefore, requesting that DEM include a year-round weekly aggregate for sea bass in the final regulations for 2018.

Thanks, and see you at the workshop on Wednesday.

Sincerely,

David Borden  
Executive Director

cc:

Janet Coit, Director RI DEM  
Gary Mataronas, F/V Edna May  
John Peabody, F/V Lady Clare



## ATLANTIC OFFSHORE LOBSTERMEN'S ASSOCIATION

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David Borden, Executive Director  
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Jason McNamee, Chief Marine Fisheries  
RI Division of Fish and Wildlife  
Jamestown, RI 02835-9906

November 20, 2015

Dear Jason:

I was out of the State for the recent public hearing on the marine regulations and would like to offer a few comments in regards the Rhode Island black sea bass regulations, during the comment period which ends November 26, 2015. During each of the last two years, I have submitted letters in support of the adoption of a weekly aggregate limit for black sea bass, as a means of reducing regulatory discards in the fishery. Our Association, therefore, supports the Department's hearing proposal as written. The logic for this regulatory change has been included in my prior letters on the issue, which I have attached for the record.

However, the rationale for regulatory change can be summarized quickly by saying that during the period of September through April the black sea bass migrate offshore in the fall, and then return to nearshore areas in the spring. This migration is well documented in the literature and stock assessments for the species. The larger, and most valuable fish, generally start their offshore migration in Rhode Island in August. During this migration timeline, the fish are principally captured as a bycatch in the lobster, gillnet, and trawl fisheries as they move offshore. Most of these fisheries do not target black sea bass.

Since these fisheries take place at depths greater than 100 feet, most of the black sea bass caught exhibit air bladder expansion due to the pressure change, yet the low daily possession limits effectively require fishermen to discard fish that are unlikely to survive. In addition, as noted in my letter of October 15, 2013, undocumented discards create technical problems and raise the uncertainty levels in the stock assessment, therefore lowering future quota levels. It is logical to assume that these problems will expand as the sea bass population expands its range into northern waters.

As I recommended in prior correspondence, I believe that adoption of a properly structured weekly aggregate program could convert some of the dead discards to landings, particularly for vessels that make multi-day trips. I believe this to be a prudent and conservative change, which has its basis in the proper stewardship of the resource.

I am therefore requesting that the Department include a weekly aggregate in the final regulations. If for some reason you cannot accommodate a weekly aggregate during the summer months (May through August), I suggest you adopt a weekly aggregate for the period September 1 through April 30 annually, as proposed in the public hearing document.

Thank you for the opportunity to comment.

Sincerely,

David Borden  
Executive Director

cc: John Peabody/AOLA Members



## ATLANTIC OFFSHORE LOBSTERMEN'S ASSOCIATION

David Spencer, President  
[exec@offshorelobster.org](mailto:exec@offshorelobster.org)

David Borden, Executive Director  
[dborden@offshorelobster.org](mailto:dborden@offshorelobster.org)

Jason McNamee, Supervising Biologist  
RI Division of Fish and Wildlife  
Marine Fisheries  
Jamestown, RI 02835-9906

Tuesday, November 18, 2014

Dear Jason:

I would like to offer a few comments in regards to the RI black sea bass regulations, specifically to the current possession requirements. I have attached a copy of a letter I submitted last year which characterized the discard problem that continues this year. This problem is no doubt expanding as the sea bass population expands and I think it is time for the Department to experiment with another way of managing the fishery, particularly during the winter / spring period when the fishery is generally offshore.

As I recommended last year, I believe that adoption of a properly structured weekly aggregate program could convert some of the dead discards to landings, particularly for vessels that make multi day trips. I am therefore requesting that the Department consider including a provision in the next regulatory action to convert the current black sea bass regulatory program into a weekly aggregate program during the time period of November 1 through April 30. The specifics of the proposal need to be developed after staff examine current catch rates for 2013 and 2014, and quota levels for 2015. Staff would then be in position to offer strategies and aggregate landing alternatives that reduce this unnecessary waste of an extremely valuable resource.

Current regulations provide for lower possession limits from November 1 to December 31, and much higher possession limits from January 1 to April 30, so it might also make sense to standardize the regulation during this entire timeline. To be clear, I am not suggesting that the sub-period allocations be changed at this time, but that this concept is utilized within the current sub-period framework.

Thank you for the opportunity to comment.

Sincerely

David Borden

cc: John Peabody/ AOLA Members  
Chris Brown President RI Commercial Fishermen's Association;  
Lanny Dellinger, President RI Lobstermen's Associations



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Jason McNamee, Supervising Biologist  
RI Division of Fish and Wildlife  
Marine Fisheries  
Jamestown, RI 02835-9906

Tuesday, October 15, 2013

Dear Jason:

I would like to offer a few comments in regards the RI black sea bass regulations, specifically in regards the current possession requirements. I am aware that you have a meeting on this issue tonight and request that you discuss these concerns during the session. I recently assumed the position of interim Executive Director of the Atlantic Offshore Lobstermen's Association, and attended the September membership meeting. During the meeting a member of the Association, who is a RI resident, and docks his vessel in Pt. Judith, commented on the large and increasing by-catch of black sea bass in his lobster traps, asking if there is anything that can be done about the low possession limits. His point was that the low possession limit has the unintended effect of causing regulatory discards. After the meeting I also checked with a number of RI fishermen and confirmed that this problem is also manifesting itself in other inshore fisheries, and I have copied them so that they can comment directly.

As far as background, there has always been a traditional by-catch of black sea bass by gill net fishermen, trawlers, and inshore and offshore lobster gear but the situation has become more pronounced in recent years as the population has been rebuilt and expanded. This creates a number of problems, one of which is that the by-catch in general is exceeding the daily possession limits by a substantial margin, resulting in regulatory discards. This occurs primarily in the spring, fall and summer periods. Most of the black sea bass being caught are in the jumbo and large size category, which command premium prices in the market, so the regulatory discards result in not only an unnecessary waste of resources, but also a substantial loss of income. Due to a lack of NMFS observer coverage on some of these vessels, this by-catch in generally is not well documented or quantified in the NMFS data base.

The RI daily possession limits were historically set at levels to accommodate this by-catch during a period in which the black sea population was over exploited and at low biomass levels. Black sea bass are no longer overfished and neither is there overfishing taking place, and yet the possession limits and quotas have essentially remained unchanged for a considerable period of time, slightly increasing in recent years. This situation has been caused by the high degree of uncertainty in the stock assessment, which causes a continuation of low quotas for this species.

Although there are a significant number of aspects of this problem, one key feature relates to the fact that black sea bass have air bladders which expand when they are retrieved from depths greater than approximately 70 feet. There is little scientific information available on the actual

mortality rates on fish that get subjected to this condition , but it is logical to assume that there is some, if not a significant amounts of discard mortality. Since the by-catch in lobster gear is unavoidable, the combination of increasing abundance and low daily possession limits invariably results in increasing regulatory discards. Keep in mind that the lobster fishery is in the process of dramatically reducing the number of traps in the water, but that action alone has not avoided this condition.

Equally problematic is that the condition perpetuates itself, since the resulting mortality causes future quota reductions, when factored into the stock assessment, even if there is a lack of observer data to quantify the extent of the problem. I also note that although the problems outlined above are lobster gear specific, I believe that the same problems may manifest themselves in the otter trawl fishery. This potentially can result from the disconnect between high weekly limits on scup and a low daily possession limit on black sea bass, all of which are typically caught on similar tows and areas . I suggest you discuss or confirm that aspect of issue with someone like Chris Brown who I have copied with this email.

It is highly unlikely that the uncertainty in the stock assessment will be clarified soon, thus resulting in substantial increases in quota which could be used to address this problem. I therefore believe the Department should explore other alternatives to the current daily possession system which convert black sea bass regulatory discards into landings, as we should be accounting for, and managing, all mortality on the stock.

I am therefore requesting that the Department include a provision in the next, or subsequent, regulatory action to convert the current black sea bass regulatory program into a weekly aggregate program. The specifics of the proposal need to be developed, after staff examines current catch rates for 2013, and quota levels for 2014. Staff would then be in position to offer strategies and aggregate landing alternatives that address the regulatory discard problem. To be clear I am not suggesting that the sub-period allocations be changed at this time, but that this concept be utilized within the current sub-period framework. .

Thank you for the opportunity to comment.

Sincerely;

David Borden

cc: AOLA Members

Mark Gibson, Deputy Chief Fish and Wildlife

Chris Brown President RI Commercial Fishermen's Association;

Lanny Dellinger, President RI Lobstermen's Associations

Congrats on the big increase we seem to have coming.

My 2 cents on what to do with this if I was the only person involved would be to try and get more percentage for the last quarter and raise quota significantly for January. December and January were traditionally my high sea bass months. I gave up fishing a couple of areas in December because I was catching so many sea bass. I would go back if I could keep the bass.

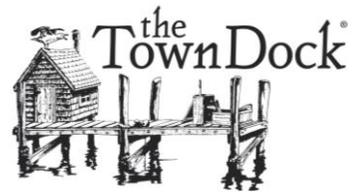
This last year I seemed to also have a lot in February, but we drop a lot after.

I can only speak for myself, so I will.

Thanks immensely for your efforts

John Peabody

ps. Feel free to do daily limits all year long, because with aggregate program I would make out even better :)



2 State Street | PO Box 608  
Narragansett, RI 02882

Dear Chief McNamee,

We'd like to put forward proposals to be considered for the upcoming 2020 fishing year.

### Summer Flounder

Jan 1<sup>st</sup>- April 30<sup>th</sup> (Winter): For this sub-period we are suggesting a 1,500 lbs weekly limit. This year, with the 1,500 lbs/bi-weekly limit there was a large increase in the trip limit towards the end of this fishing period which caused instability in the market. We believe that changing the limit to a weekly limit would prevent such increases, allowing for a more stable market.

May 1<sup>st</sup>-Sept 15<sup>th</sup> (Summer): For this sub-period, we suggest starting at a daily limit of 100 lbs. If it looks like the quota might be reached a reduction in the daily limit can be implemented.

### Black Sea Bass

Jan 1<sup>st</sup>-April 30<sup>th</sup>: We are suggesting an increase of the weekly limit to 750 lbs.

We support status quo for the summer and fall sub-periods.

The goal of all these suggestions is to keep the fisheries open all year without disrupting the markets too much.

Thank you for considering our suggestions.

Sincerely,

Katie Almeida  
Fishery Policy Analyst



TOWNDOCK.COM  
INFO@TOWNDOCK.COM  
PH 401-789-2200 | FAX 401-782-4421



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

## **SUMMARY OF HEARING COMMENTS**

A public hearing was held on **November 12, 2019** at 6:00 PM, URI Narragansett Bay Campus, Corless Auditorium, Narragansett, RI. Approximately 20 persons were in attendance. Please note this document is a *summary only* (i.e., names of persons making comments and main points made); please visit the Division website for the [full video recording](#) (expand the “SHOW MORE” tab to show individual agenda items and their time of recording).

1. **Remove provision that specifies quota management for tautog over-harvest, as the summer sub-period referenced no longer exists in rule (section 1.6(A)(1)(b)(2)):**
  - *K. Booth:* In support of proposal as long as any overages in any given sub-period as deducted from the same sub-period in the following year.
  
2. **Establish rule for high-grading prohibition (section 1.6(H)):**
  - *J. Perkins:* Concerned that definition of term is unclear which could lead to overly discretionary enforcement.
  - *T. Mulvey:* Concerned that definition of term is unclear which could lead to overly discretionary enforcement.
  - *P. Duckworth:* Concerned that definition of term is unclear which could lead to overly discretionary enforcement.
  - *G. Duckworth:* Concerned that definition of term is unclear which could lead to overly discretionary enforcement.
  - *J. Walker:* Concerned that definition of term is unclear which could lead to overly discretionary enforcement.
  - *A. Eagles:* Not in support of proposal as not enforceable.
  
3. **2020 Commercial Black sea bass management (section 3.7.2(A) and (B)):**
  - *J. Walker:* Close in July and move the July allocation to May-June to keep prices higher. Prices are low in July due to overlap with open season in Massachusetts; better to harvest in May-June when prices are higher. Better management could result in a directed fishery for state vessels. In support of eliminating Jan.-April sub-period or re-allocating a portion of its allocation to other sub-periods.

- J. Perkins: Move allocation from July to other sub-periods when prices are higher and avoid overlap with Massachusetts season. Combine May-June and July sub-periods into a single sub-period.
- T. Mulvey: Allocation needs to be increased in sub-periods where access to fish is greatest.
- G. Duckworth: In support of aggregate limits for all sub-periods to reduce discards.
- A. Eagles: Eliminate Jan.-April sub-period and move its allocation to the Spring and Fall. The Jan.-April opening doesn't benefit state vessels.
- P. Duckworth: Eliminate Jan.-April sub-period and move its allocation to other sub-periods to benefit state vessels. Discards are greatest in the summer months.
- D. Borden/AOLA: Combine May-June and July sub-periods into a single sub-period and increase starting possession limit. Not in support of eliminating the Jan.-April sub-period as would increase discards.
- K. Booth: In support of maintaining a Summer opening. In support of moving allocation from July into August or early September.
- D. Pesante: In support of moving allocation into August or September to be able to harvest some fish and reduce discards.

4. **2020 commercial Scup management (section 3.8.2(A)&(B)):**

- No comments were made.

5. **2020 commercial Summer flounder management (section 3.10.2):**

- P. Duckworth: In support of increasing the starting possession limit in the May-Sept. sub-period to 100 lbs/day. Concerned that proposed changes to the Jan.-April sub-period would result in excessive catch rates and overages.
- J. Walker: Concerned that proposed changes to the Jan.-April sub-period would result in excessive catch rates and overages only favorable to off-shore vessels.
- T. Mulvey: In support of a starting possession limit for the Jan.-April sub-period of 1,000 lbs/week and opening the Aggregate Landing Program in January; increasing the starting possession limit in the May-Sept. sub-period to 100 lbs/day; and transferring any underages in the Sept.-Dec. sub-period into the Jan.-April sub-period in the following year.
- K. Booth: Any harvest overages should be deduced from same sub-period in the following year.
- J. Perkins: Concerned that proposed increases in the Jan.-April sub-period could reduce quota allocated to the May-Sept. sub-period.
- J. Walker: In support of the alternative industry proposal of a weekly possession limit to better track harvest and avoid an overage. Not in support of opening the Aggregate Landing Program in January.
- R. Morris: In support of reducing the allocation in the Jan.-April sub-period to allow fish to spawn and increasing the starting possession limit in the May-Sept. sub-period to 150 lbs/day.

6. **2020 commercial Bluefish management (section 3.18.2):**

- *J. Perkins:* In support of maximizing the possession limit while maintaining an open season.
- *D. Borden:* In support of maximizing the possession limit while maintaining an open season.
- *D. Pesante:* In support of the proposed increase in minimum size to 18” so that fish are sexually mature before harvesting.
- *J. Walker:* In support of the proposed increase in minimum size to 18” so that fish are sexually mature before harvesting.
- *G. Duckworth:* In support of the proposed increase in minimum size to 18” so that fish are sexually mature before harvesting.
- *Public comment:* In support of the proposed increase in minimum size to 18”. Fish trap bycatch of smaller fish not a major discard issue as fish are usually alive when returned to the water.
- *P. Duckworth:* In support of the proposed increase in minimum size to 18” so that fish are sexually mature before harvesting.

7. **2020 commercial menhaden management (section 3.22.2):**

- General management comments were made; no proposals were offered.

8. **Ocean pout harvest prohibition (proposed new section 3.32):**

- No comments were made.

9. **Atlantic wolffish harvest prohibition (proposed new section 3.33):**

- No comments were made.

10. **Part 12 – Research Pilot Aggregate Program:**

- *G. Duckworth:* In support of increasing the number of participating vessels. Or if can't increase number of participating vessels, then omit eligibility for current participants and only continue program with new participants. Program is resulting in increases in harvest due to changes in behavior where program participants are now targeting species for harvest rather than harvesting as a bycatch.
- *J. Walker:* In support increasing the number of participating vessels and extending the application period to make it easier to participate. In support of maintaining eligibility for current participants to maintain a control group as well as providing for new entrants. In support of aggregate limits as the standard.
- *R. Sylvestre:* In support of providing for new participants and omitting eligibility for current participants if it allows for new entrants. Program is resulting in changes in behavior where certain species are now targeted species rather than bycatch species.

- T. Mulvey: If not increasing the number of participating vessels then current participants that are not actually participating should be omitted from program and replaced with new entrants. Program is resulting in changes in behavior where program participants are now targeting species for harvest rather than harvesting as a bycatch. Most restrictive rule limits all fishermen to lowest possession limit. Program is resulting in a special class of fishermen.
- R. Morris: In support of aggregate limits as the standard available to all fishermen. If not increasing the number of participating vessels then current participants that are not actually participating should be omitted from program and replaced with new entrants. Need observers on vessels to verify gear and activities.
- D. Borden/AOLA: Shorten the application to four weeks and notify via listserv. Current participants need to be ready to participate on January 1, 2020.
- P. Duckworth: In support of expanding program to new participants. Program should be available to all fishermen or not adopted. Program is not consistent with the Fluke Exemption/Aggregate Landing Program. There are too many unknown variables that should be considered before continuing the program. Program is increasing effort. Need to be able to apply before January 1.
- K. Booth: Program should not be re-adopted if it is resulting in changes in behavior where species are now targeted, which the program was not designed to do.

11. **Part 13 – Cooperative Multi-State Possession and Landing Pilot Program for Summer Flounder (proposed new adoption):**

- T. Mulvey: Program will result in increased effort from federal vessels.
- J. Walker: Discussion only, no comment made.
- P. Duckworth: Program will result in increased effort and will be difficult to enforce.
- G. Duckworth: The eligibility provision that applicants have not been assessed a criminal or administrative penalty within the past three years is overly restrictive.
- R. Morris: The eligibility provision that applicants have not been assessed a criminal or administrative penalty within the past three years is overly restrictive.
- A. Eagles: Provide for Director discretion regarding the eligibility provision that requires that applicants have not been assessed a criminal or administrative penalty within the past three years.

12. **Whelk pot tagging program (proposed new section 4.18):**

- A. Eagles: It's unclear if federal Area 2 lobster permit holders who also hold a license in RI to harvest whelk (i.e., multi-purpose or whelk endorsement) will be able to legally harvest whelk in RI, in that federal lobster trap tags are required to be placed in their whelk pots. Can't place federal tags in state whelk pots, so federal Area 2 lobster permit holders may not be able to fish for whelk in RI state waters. A whelk pot is not designed to catch lobster; different pot definitions may need to be reviewed. State definition of whelk pot should suffice to not require

federal lobster tags in whelk pots. Proposed rule is unfair and does not support local fishermen. Federal LTA holders need to use their lobster tags to generate income from lobster pots, if they have to use these tags in the whelk pots it is making them choose one or the other which is unfair. Federal rule should be addressed.

- P. Duckworth: Confusion on the water if can haul whelk pots same trip as lobster pots. Rule requires federal lobster tags in whelk pots.
- J. Walker: Proposed rules contradict federal Area 2 lobster rules. If implementing a tagging program for whelk pots should then implement for all pot fisheries.
- G. Duckworth: Most restrictive rule applies.
- R. Morris: Let the state manage all gear within 3-mile limit.
- T. Mulvey: Most-restrictive rule applies.
- Comment: Rules should not be adopted as inconsistent with federal Area 2 lobster rules.

For the full video of the hearing please go to:

<https://www.youtube.com/watch?v=KiTMKiBRe3w>. Please expand the “SHOW MORE” tab to show individual agenda items and their time of recording.



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

September 9, 2019

Michael Pentony, Regional Administrator  
NOAA - Greater Atlantic Region  
55 Great Republic Drive  
Gloucester, MA 01930.

Dear Mr. Petony:

I write in strong support of Framework Adjustment 14 to the Summer Flounder, Scup, and Black Sea Bass Fishery Management Plan.

The Division, as well as the entire Rhode Island delegation to the Atlantic State Marine Fisheries Commission (“Commission”), was actively involved in the development of this Framework Adjustment, and voted unanimously in support of its adoption by the Commission.

The Framework Adjustment includes three measures that would allow for more flexibility in the recreational and commercial management of summer flounder, scup, and black sea bass. We support all three measures, with particular emphasis on the first two measures.

The first measure would include conservation equivalency as an annual management consideration for the black sea bass recreational fishery. This change would render the recreational management process for black sea bass consistent with the long-standing process for the recreational management of summer flounder. Conservation equivalency enables federal measures to be waived, provided that states, acting through the Commission, implement measures that limit harvest to the coastwide recreational harvest limit. States already undertake this process for black sea bass, but that process is awkwardly juxtaposed with the requirement for separate federal measures for federal waters. Having one set of measures, applicable to all recreational fishermen on a state-by-state basis, will streamline and improve the process for managing recreational black sea bass.

The second measure would establish a Block Island Sound Transit Zone for state-only permitted vessels fishing in, or returning to, Rhode Island state waters around Block Island. It would address any future scenarios involving differing Federal and state management measures pertaining to summer flounder, scup, and black sea bass – both commercial and recreational. The transit zone would mirror the current transit area for striped bass and allow for transit by state-only permitted commercial and party/charter vessels and private recreational anglers with summer flounder, scup, and black sea bass on board that were legally harvested in state waters. These vessels could transit between the Rhode Island state waters surrounding Block Island and the coastal state waters of Rhode Island, New York, Connecticut, or

Massachusetts while complying with the applicable state waters measures for those species. Transit through the defined area would be allowed, provided that fishermen and harvest are compliant with all applicable state regulations, gear is stowed in accordance with Federal regulations, no fishing takes place from the vessel while in Federal waters, and the vessel is in continuous transit.

This proposed transit zone is of critical importance to Rhode Island anglers, and to commercial and for-fire vessels holding state-only permits. The relatively narrow band of Federal waters that bisects Block Island Sound poses potential legal obstacles for recreational and commercial fishermen transiting those Federal waters with summer flounder, scup, and/or black sea bass legally harvested in state waters. The transit zone would do away with those obstacles, and thereby facilitate a sound, common-sense approach to the management of the three species in the waters of Block Island Sound. Appropriately, the transiting allowance would not pertain to Federal permit holders, who would continue to be required to abide by the measures of the state(s) in which they harvest or land their catch, or the Federal waters measures, whichever are more restrictive.

The third measure would enable a maximum size limit to be established in Federal waters for the recreational management of summer flounder and black sea bass. Although the states are able to set a maximum size limit for fish caught in state waters, and thus enable consideration of slot limits, under current rules, only a minimum size can be specified in Federal waters. By including allowance for a maximum size, the Mid-Atlantic Council and the Commission could recommend both a minimum and maximum recreational size limit to allow for consideration of slot limits and trophy fish when setting recreational measures for these two species each year.

We recognize and acknowledge that the proposed maximum-size measure does not make any immediate adjustments to any current Federal recreational measures. Rather, it adds an additional “tool to the toolbox” for potential future consideration of changes to the recreational management programs for the two species. This added flexibility is important and welcome.

Thank you for this opportunity to lend our strong support to these proposed Federal regulations, which will effectively implement the provisions of Framework Adjustment 14 to the Summer Flounder, Scup, and Black Sea Bass Fishery Management Plan.

Sincerely,



Jason McNamee, PhD  
Chief  
Division of Marine Fisheries

cc: Janet Coit, RIDEM Director  
Members, RI Marine Fisheries Council  
David Borden, ASMFC Commissioner  
Eric Reid, ASMFC Commissioner (Legislative Proxy)

# **RI DEPARTMENT OF ENVIRONMENTAL MANAGEMENT**

## **Division of Marine Fisheries**

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### **Public hearing**

November 12, 2019





1. **Remove provision that specifies quota management for tautog overharvest, as the summer subperiod referenced no longer exists in rule (Part 1, section 1.6(A)(1)(b)(2))**

**Annotated language:**

Any over-harvest from the previous year will be deducted from ~~to~~ the entire state allocation of the current year before redistributing according to the species-specific management plan. ~~For the Tautog fishery, if an over-harvest has occurred for the entire year, that over-harvest will be deducted from the Summer sub-period of the following calendar year.~~

## 2. Establish rule for high grading prohibition (Part 1, section 1.6(H))



### Annotated language:

High-grading prohibition: Returning legal-size fish to the water after they have been taken into possession for the purposes of retaining another more desirable legal-size fish is prohibited. Tautog that are harvested and kept alive are exempt from this prohibition.

### 3. 2020 Commercial Management of Black Sea Bass (Part 3, section 3.7.2(A) and (B))



- Considerations for 2020 management:
  - No changes have been noticed.
  - 2020 RI commercial quota expected to increase from 377k lbs to 613k lbs.

#### Current management:

Min. size	Season	Allocation	Starting Poss. limit (lbs)
11"	Jan. 1 – April 30	25%	500 (vsl/week)
	May 1 – June 30	25%	50 (vsl/day)
	July 1 – July 31	19.5%	50 (vsl/day)
	Aug. 1 – Sept. 14		Closed
	Sept. 15 – Oct. 31	19.5%	50 (vsl/day)
	Nov. 1 – Dec. 31	11%	50 (vsl/day)

### 3. 2020 Commercial Management of Black Sea Bass (Part 3, section 3.7.2(A) and (B)) cont'd.



- Workshop discussion:

- Increase May 1 - June 30 sub-period allocation percentage by decreasing allocation percentage(s) from other sub-period(s).
- Remove the closed sub-period from August 1 – September 14 with allocation adjustments to other sub-periods.
- Increase Sept. 15 – Oct. 31 sub-period allocation percentage by decreasing allocation percentage(s) from other sub-period(s).
- Increase Nov. 1 – Dec. 31 sub-period allocation percentage by decreasing allocation percentage(s) from other sub-period(s).

- Alternative industry proposal submitted: Increase 1/1 – 4/30 possession limit to 750 lbs/vsl/week.

Season	Allocation	Starting Poss. limit (lbs)
Jan. 1 – April 30	25%	<del>500</del> <u>750</u> (vsl/week)

## 4. 2020 Commercial Management of Scup (Part 3, section 3.8.2(A) and (B))



- No changes have been noticed.

### Current management:

Min. size	Seasons	Sector	Allocation	Starting Possession Limit
9"	Winter I: (1/1 – 4/30)		Coastwide	50,000 lbs/vsl/day
	Summer: (5/1 – 9/30)	Gen. Cat	40% of sub-period quota	10,000 lbs/vsl/wk
		Floating Fish Trap	60% of sub-period quota	Unlimited
	Winter II: (10/1 – 12/31)		Coastwide	2,000/27,000 lbs/vsl/day*

\* Winter II possession limit begins at 2,000 lbs/vsl/day; change to 27,000/day after Winter I roll over calculated.

## 5. 2020 Commercial Management of Summer Flounder (Part 3, section 3.10.2)



- **Noticed changes as proposed:**
  - Increase the starting possession limit during the May 1 – September 15 sub-period from 50 to 100 pounds per vessel per day.
  - Open the Summer Flounder Aggregate Landing Program on the Sunday of the first full week in January instead of the Sunday of the first full week in February and amend starting/opening possession limit for the Summer Flounder Aggregate Landing Program from 1,500 lbs/bi-week to 2,000 lbs/bi-week.

Min. size	Season	Allocation	Starting Poss. limit
14"	Jan. 1 – April 30	54%	100 lbs/vsl/day; <del>1,500</del> <u>2,000</u> lbs/vsl/bi-week (Agg. Landing Program participants)
	May 1 – Sept. 15	35%	<del>50</del> <u>100</u> lbs/day
	Sept. 16 – Dec. 31	11%	100 lbs/day

## 5. 2020 Commercial Management of Summer Flounder (Part 3, section 3.10.2) cont'd



- **Alternative industry proposal submitted\***:
  - Increase the starting possession limit during the May 1 – September 15 sub-period from 50 to 100 pounds per vessel per day.
  - Amend starting/opening possession limit for the Summer Flounder Aggregate Landing Program from 1,500 lbs/bi-week to 1,500 lbs/week.

Min. size	Season	Allocation	Starting Poss. limit
14"	Jan. 1 – April 30	54%	100 lbs/vsl/day; 1,500 lbs/vsl/ <del>bi-week</del> <u>week</u> (Agg. Landing Program participants)
	May 1 – Sept. 15	35%	<del>50</del> <u>100</u> lbs/day
	Sept. 16 – Dec. 31	11%	100 lbs/day

\*Industry proposal received during the public comment period, after public notice.

## 6. 2020 Commercial Management of Bluefish (Part 3, section 3.18.2)



- Considerations:
  - 2020 Commercial Quota: 188,637 lbs. (similar to 2019 initial quota but without the recreational rollover).
  - Quota transfer from recreational will not occur in 2020.
- Noticed changes as proposed:
  - Increase the minimum size from 12” to 18”.
  - Decrease starting possession limit during the May 1 – November sub-period from 8,000 to 6,000 pounds per vessel per day.

Min. size	Sub-period	Poss. Limit
<del>12</del> <u>18</u> ”	1/1 – 4/30	1,000 lbs/2 wks
	5/1 – 2 <sup>nd</sup> Sat. in Nov.	<del>8,000</del> <u>6,000</u> lbs/wk
	2 <sup>nd</sup> Sun. in Nov. – 12/31	500 lbs/wk

## **7. 2020 Commercial Management of Menhaden** **(Part 3, section 3.22.2)**



- The Division is not proposing any management changes for 2020.
- Anticipated 2020 commercial quota similar to 2019 (~2.4 million pounds).

## 8. Proposed prohibition of Ocean pout in state waters (Part 3, proposed new section 3.32)



- Considerations: Proposal syncs state and federal rule; harvest and possession is prohibited in federal waters.

## 9. Proposed prohibition of Atlantic wolffish (Part 3, proposed new section 3.33)



- Considerations: Proposal syncs state and federal rule; harvest and possession is prohibited in federal waters.

# 10. Continuation of “Part 12 - Research Pilot Aggregate Program” regulations



- **Noticed changes as proposed:**

1. Reduce the eligibility requirement for historical record of landing summer flounder from 5 years (2014) to 1 year (section 12.7.2(B)).
2. Proposal to increase number of participating vessels in the program from 3 to 6 per gear category (section 12.7.2(C)).
3. Proposal to amend the application period from no later than November 30, 2018 to between January 1 and March 30 annually (section 12.7.2(I)).
4. Proposal to extend program through 2021 (sections 12.7.2(A) and 12.7.7).

# 11. Proposed new adoption “Part 13 - Cooperative Multi-State Possession and Landing Pilot Program for Summer Flounder”



- **Summary of proposed rule:**

- Authorize commercial fishers to simultaneously carry possession limits for, and land, summer flounder in cooperating states during the same fishing trip.
- Winter 1 sub-period only (January - April).
- Applicants must be licensed or otherwise authorized to possess and/or land summer flounder in at least one cooperating state.
- Applicant vessels must be permitted by NOAA Fisheries to possess and/or land summer flounder harvested from federal waters.
- Applicants must not have been assessed a criminal or administrative penalty, state or federal, to commercial fishing regulations or laws within the past three (3) years.
- Summer flounder catch intended for landing in Rhode Island and any cooperating state(s) must be stored separately with port identified.
- See the [noticed rule](#) for all proposed language.

## 12. Proposed adoption of a whelk pot tagging program (Part 4, proposed new section 4.18))



- **Summary of proposed rule:**
  - Adoption of a tagging program similar to lobster trap tag program.
  - One time use fastenable tags issued annually.
  - 300 original tags per fisherman
    - 10% routine loss
    - Catastrophic loss and gear rotation available
  - Tags purchased by fisherman via RIDMF (\$0.14/ tag).
  - Tags valid from September 1 – August 31.
  - Rule would take effect in 2020.
  - See the noticed rule for all proposed language.

End of Slides!



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