



RHODE ISLAND
DEPARTMENT OF ENVIRONMENTAL MANAGEMENT

OFFICE OF THE DIRECTOR

235 Promenade Street, Room 425
Providence, Rhode Island 02908

To: Conor McManus
Deputy Chief, Marine Resource Management

From: Janet Coit
Director

Date: June 11, 2020

Re: Final Decisions Pertaining to May 1, 2020 Marine Fisheries Regulatory Proposals

I have received and reviewed your memo to me, dated June 4, 2020, and attached herewith, regarding the regulatory matters that were publicly noticed on May 1, 2020 (except for items 11 and 12, which did not require notice and were reviewed by the Council's Shellfish Advisory Panel). I have also received and reviewed all relevant supporting documentation, including the public comments and draft meeting minutes from the June 1, 2020 meeting of the RI Marine Fisheries Council (Council).

I hereby approve all the Council recommendations, as set forth in your memo, which are also supported by the Division. The specific regulatory items, and the final decisions for each, are as follows:

- Control dates for commercial Summer Flounder (section 3.10.2(G)), Horseshoe Crab (section 5.10(I)), and Atlantic Rock Crab (section 5.12(A)):**
 - Decision:** Amend the rules as noticed and recommended by the Council, which add clarity to the meaning of the control dates.
- Recreational minimum size and possession limit for Cod (section 3.20.1(A) & (B)):**
 - Decision:** Amend the rule as noticed and recommended by the Council, which deletes language referencing the federal rule and replaces with the current minimum size and possession limit. I appreciate the Division's efforts to explore referencing the federal rule (i.e., Code of Federal Regulations (CFR)) in state rules, and agree that the public is better served by specifying actual minimum sizes and possession limits in the state rules.

3. **Recreational possession limit for American plaice (section 3.13.1(C)), Haddock (section 3.21.1(C)), Pollock (section 3.24.1(C)), Yellowtail flounder (section 3.28.1(C)) and Witch flounder (section 3.31.1(C)):**
 - Decision: Amend the rules as noticed and recommended by the Council, which renders the rules consist with federal rules on these species.
4. **Sub-period dates for commercial Bluefish possession limit (section 3.18.2(B)):**
 - Decision: Amend the rule as noticed and recommended by the Council, which reinstates the sub-period dates of May 1 – November 15 and November 16 – December 31 for commercial bluefish.
5. **Use of circle hooks in Coastal Shark fishery (section 3.19.1):**
 - Decision: Amend the rules as noticed and recommended by the Council, which remove the definition of “circle hook” from the coastal shark section in Part 3-Finfish, since the term is already defined in the Part 1.
6. **Incidental catches in the fisheries for Weakfish (section 3.29.2(B)(3)), Sakonnet River Bay Quahaug (section 4.12.2(J)(2)), and American Lobster (section 5.8.1(L)):**
 - Decision: Amend the rules as noticed and recommended by the Council, which replace “bycatch” with “incidental catch” for these species, thereby characterizing more accurately the unintended harvest of non-targeted marine species that are retained for sale or personal use.
7. **Whelk minimum size (section 4.9(G)):**
 - Decision: Amend the rule as recommended by the Council and supported by the Division, which removes from rule both the length and width measurement metrics for whelk and replaces them with a shell height of 2¼“. I appreciate the Division’s efforts to work with industry on this issue, and commend the sound outcome. I direct the Divisions of Marine Fisheries and Law Enforcement to conduct outreach to help assure that harvesters are aware of this new measurement metric, closely monitor compliance, and conduct additional outreach or analysis as needed to maintain effective management of the species.
8. **Boundary descriptions of Shellfish Management Areas (sections 4.12.2(A) through (V)):**
 - Decision: Amend the rules as noticed and recommended by the Council, which add longitude and latitude coordinates to shellfish management area boundary descriptions. I appreciate the added clarity provided by including coordinates and updating landmarks. I direct the Division to review all regulations for any other

areas described where the addition of coordinates is warranted or landmarks are in need of correction.

9. **Bycatch limit for Jonah Crab (section 5.11(B)):**

- Decision: Amend the rule as noticed and recommended by the Council, which renders the regulatory provision pertaining to bycatch limit consistent with the ASMFC's FMP.

10. **Summer Flounder Exemption Certificate:**

- Decision: Amend the rules as noticed and recommended by the Council, which re-locate the rules from Part 3 to a stand-alone rule, and which establish a process for validating legitimate exemption certificates and invalidating illegitimate exemption certificates. I recognize this is a first step toward improving program administration and customer service, and for subsequent determination as to whether expansion of the program to new entrants is warranted.

11. **Foster Cove (Ninigret Pond Shellfish Management Area) shellfish harvest closures (section 4.12.2(M)):**

- Decision: Amend the rules as recommended by the Council, which re-establish the shellfishing closures in the Ninigret Pond Northern and Eastern Closed Areas for an additional five years for the purpose of protecting wild oyster broodstock and supporting restoration efforts. I appreciate the Division's ongoing efforts to enhance wild oyster populations in the state, and direct the Division to closely monitor the program's effectiveness over time and report to me and the Council on an annual basis. In keeping with the recommendation of the Council, I also direct the Division to conduct disease testing, if adequate funding sources are available.

12. **Bissel Cove/Fox Island Shellfish Management Area oyster harvest moratorium (section 4.12.2(E)):**

- Decision: Amend the rule as recommended by the Council, which maintains the current oyster harvest moratorium in this shellfish management area for an additional five years for the purpose of supporting restoration efforts. In keeping with the recommendation of the Council, I also direct the Division to conduct disease testing, if adequate funding sources are available. As noted above, I appreciate the Division's ongoing efforts to enhance wild oyster populations in the state, and direct the Division to closely monitor the program's effectiveness over time and report to me and the Council on an annual basis.



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

INTER-OFFICE MEMO

TO: Janet Coit, Director

FROM: Conor McManus, Deputy Chief

DATE: June 4, 2020

SUBJECT: Decisions regarding proposed amendments to the RI Marine Fisheries regulations that were publicly noticed on May 1st and subject to a RI Marine Fisheries Council (RIMFC) on June 1st. The public notice folder contains all the necessary documentation related to this hearing, including the public notice, proposed rules, and comments received. Below is a summary of the regulatory items:

3. **Control dates for commercial Summer flounder (section 3.10.2(G)), Horseshoe Crab (section 5.10(I)), and Atlantic Rock Crab (section 5.12(A)):**

- **Background:** Division proposal to clarify the meaning of control dates currently established in rule(s) but where regulations have not been adopted relative to the control date.
- **Proposal:** Add a sentence to each of these sections: *“This control date has been established by the Department for potential future use in establishing eligibility criteria for future access to the fishery.”*
- **Public comments:** None provided.
- **RIMFC:** 7 - 0 in support as proposed.
- **Marine Fisheries:** Support as proposed.
- **Timing to file:** Immediately.

a. **Recreational minimum size and possession limit for Cod (section 3.20.1(A) & (B)):**

- **Background:** This rule was amended resulting from a public hearing in February 2019, at which time the minimum size and possession limit were stricken from rule and replaced with reference to the federal rule. At the time the Division believed that this strategy of referring to the federal rule would be beneficial to both the public and Division in that the rule would be consistently up-to-date without the need to amend the rule when the federal rule changes (the RI rule

mimics the federal rule for FMP compliance). The Division has been investigating adopting this strategy for all groundfish species, however, upon further investigation, it was determined that the federal rule as found in the Code of Federal Regulations (CFR) is not easily located, and that it is therefore best to maintain the actual minimum size and possession limit in the RI rule and remove the reference to CFR.

- Proposal: Delete language referencing CFR and replace with minimum size and possession limit.
- Public comments: None provided.
- RIMFC: 7 - 0 in support as proposed.
- Marine Fisheries: Support as proposed.
- Timing to file: Immediately.

13. **Recreational possession limit for American plaice (section 3.13.1(C)), Haddock (section 3.21.1(C)), Pollock (section 3.24.1(C)), Yellowtail flounder (section 3.28.1(C)) and Witch flounder (section 3.31.1(C)):**

- Background: The RI rules mimic the NOAA rules for all groundfish species for compliance with the NOAA FMPs for these species.
- Proposal: Amend/update the recreational possession limit for these species to “unlimited”.
- Public comments: None provided.
- RIMFC: 7 - 0 in support as proposed.
- Marine Fisheries: Support as proposed.
- Timing to file: Immediately.

14. **Re-establish sub-period dates for commercial Bluefish possession limit (section 3.18.2(B)):**

- Background: Sub-period hard dates were replaced with “second Saturday in November” and “second Sunday in November” resulting from a public hearing held February 2018 in order to consistently open the sub-periods on a Sunday and avoid confusion regarding possession limits for partial weeks. However, a recent change made to the general provisions in ([Part 1](#), section 1.6(E)(5)) regarding partial weeks of weekly possession limits corrects this, and the hard dates are preferred for rule.
- Proposal: Re-instate hard sub-period dates of May 1 – November 15 and November 16 – December 31.
- Public comments: None provided.
- RIMFC: 7 - 0 in support as proposed.
- Marine Fisheries: Support as proposed.
- Timing to file: Immediately.

15. **Remove circle hook definition from coastal shark section (section 3.19.1):**

- Background: Term is currently only located in section 3.19.1 - Coastal Sharks.
- Proposal: Division proposal to remove the definition from Part 3-Finfish, in conjunction with term recently having been added to the definitions section in Part 1, so as to apply more broadly.
- Public comments: None provided.
- RIMFC: 7 - 0 in support as proposed.
- Marine Fisheries: Support as proposed.
- Timing to file: Immediately.

16. **Change “bycatch” to “incidental catch” for Weakfish (section 3.29.2(B)(3)), Sakonnet River bay quahaug possession limit (section 4.12.2(J)(2)), and American lobster (section 5.8.1(L)):**

- Background: The Division determined that “bycatch” as used in these sections was not accurate, in that “bycatch” refers to species not retained. In conjunction with recent amendment to Part 1 which added term “Incidental Catch”, which more accurately describes the activity of the unintended harvest of non-targeted marine species that are retained for sale or personal use.
- Proposal: Division proposal to replace “bycatch” with “incidental catch” in these sections.
- Public comments: None provided.
- RIMFC: 7 - 0 in support as proposed.
- Marine Fisheries: Support as proposed.
- Timing to file: Immediately.

17. **Whelk minimum size (section 4.9(G)):**

- Background: The RI whelk fishery is managed as a mixed-species fishery, including channeled and knobbed whelk, and implements minimum sizes for shell width and shell length. Both shell width and length are problematic metrics, with shell width difficult to measure due to the asymmetrical shape of whelk, and shell length challenging due to frequent breakage of the tip, which can then result in non-compliance after initial harvest due to handling. The Division originally brought this matter to workshop in November 2018 and a public hearing March 2019 at the request of industry to provide clarity to the method for measuring whelk minimum size. At that time no amendments were filed and the Division was directed to “*continue to work with industry to develop improved language and consistent measuring methods*” (see [Director Decision memo dated April 12, 2019](#)). The Division then brought the matter back to workshop in March of this year, at which time shell height was introduced by a member of industry as a potential metric for minimum size.

Shell length, width, and height measurement data were collected for both species and correlated by linear regression to generate a predicted shell height by species corresponding to the current minimum shell width (3”) and shell length (5 3/8”).

This produced shell height predictions of 2¼” to 2-9/32”, with the smaller predicted shell height of 2¼” resulting from the knobbed whelk data. Public comment submitted for the proposed rule out to notice, as well as a recommendation from the Shellfish Advisory Panel, then requested additional analysis to support the equivalent shell height measurement of 2 9/32” proposed by the Division. Upon further analysis, the Division determined that the two species of whelk, channeled and knobbed, have slightly different shell width/shell length/shell height ratios, with knobbed whelk shell height being smaller than the channeled relative to width and length. As the resource is managed as mixed species fishery, the Division concluded that a shell height of 2¼” would be a more appropriate minimum size, reduced from the minimum size of 2 9/32” as proposed in the noticed rule.

- Proposal: Division proposal to remove length and width as measurement metrics and replace with height.
- Public comments: Two comments provided which questions the minimum height size proposed, and opposed any increase in minimum size.
- RIMFC: 7 - 0 in support of recommending adoption of the proposed rules to remove both length and width as minimum size measurement metrics for whelk and replace with a minimum shell height of 2¼”.
- Marine Fisheries: Support as recommended by the Council.
- Timing to file: Immediately.

18. **Clarification of boundary descriptions of Shellfish Management Areas (sections 4.12.2(A) through (V)):**

- Background: Division proposal to add coordinates to area boundaries in light of widespread use of GPS devices on vessels. Over the past year Division staff conducted sites visits of all areas to investigate landmarks currently identified in rule, and proposed amendments to the rule where appropriate to assure consistency with actual field conditions.
- Proposal: Add longitude and latitude coordinates to area boundary descriptions.
- Public comments: None provided.
- RIMFC: 7 - 0 in support as proposed.
- Marine Fisheries: Support as proposed.
- Timing to file: Immediately.

19. **Correct rules for Jonah Crab consistent with the FMP (section 5.11(B)):**

- Background: Current rule provides for a bycatch limit of 1,000 crabs/vessel/day and does not specify there has to be equal poundage of other species, which is inconsistent with the FMP.
- Proposal: Amend rule to address bycatch limit for consistency with the FMP.
- Public comments: None provided.
- RIMFC: 7 - 0 in support as proposed.
- Marine Fisheries: Support as proposed.

- Timing to file: Immediately.

20. **Summer Flounder Exemption Certificate:**

- Background:
 - The Summer Flounder Exemption Certificate program was created in 1996 to safeguard the RI Summer Flounder quota for RI residents.
 - There have been no programmatic updates since inception to align the program with management and fishery changes.
 - Closed program does not foster new entrants into fishery that has significantly evolved since the program's inception.
 - The current program does not allow for the flexibility needed by industry.
 - The number of valid certificates is unclear. Many current certificates may be invalid according to rule and need to be reviewed and substantiated.
- Proposal: Phased regulatory approach: Phase 1 to move rule from Part 3 to stand-alone rule (proposed Part 14) and establish a new Certificate renewal process to renew existing valid certificates and identify invalid certificates.
- Public comments: None provided.
- RIMFC: 7 - 0 in support as proposed.
- Marine Fisheries: Support as proposed.
- Timing to file: Immediately.

21. **Foster Cove (Ninigret Pond Shellfish Management Area) shellfish harvest closures (section 4.12.2(M)):**

- Background: Two areas, Foster Cove Northern Closed Area and Foster Cove Eastern Closed Area, were created by rule in December 2014 and closed to the harvest of shellfish to support oyster enhancement work conducted by the Division. These closures expired January 1, 2020.
- Proposal: Division proposal to re-establish closures indefinitely for continued protection of wild oyster broodstock and support restoration efforts.
- Public comments: N/A (rule is exempt from APA requirements pursuant to [R.I. Gen. Laws § 20-3-4](#))
- RIMFC: 7 - 0 in support of re-establishing the closure until January 1, 2025 with ongoing oyster disease testing.
- Marine Fisheries: Support as recommended by the Council. Data shows that the reefs within the Foster Cove oyster reserves contain a broad size of distribution, with the proportion of legal-size oysters > 2X greater than areas open to harvest. The Division therefore purports that these areas are functioning as intended, with additional work being scoped for 2020. Since the Division is only enhancing substrate (placing oyster shell to increase habitat for oyster settlement) and is not deploying live oysters, disease testing is not a current component of the enhancement work. In recognition of the Council's recommendation, the Division will conduct disease testing as funding allows.
- Timing to file: Immediately.

22. **Bissel Cove/Fox Island Shellfish Management Area oyster harvest moratorium (section 4.12.2(E)):**

- **Background:** This management area was closed to oyster harvest by rule in September 2010 to support oyster restoration efforts conducted by the Division, and is set to expire November 15, 2020. Restoration efforts involved the creation of oyster reserves (i.e., reefs) in the closed portion of the management area, with the entire management area closed to oyster harvest due to very low densities of legal-size oysters present. Although restoration work waned from 2011-2014, restoration work was re-initiated in 2015 and is planned to continue through at least 2025.
- **Proposal:** Division proposal to maintain the current oyster harvest moratorium indefinitely for continued restoration efforts.
- **Public comments:** N/A (rule is exempt from APA requirements pursuant to [R.I. Gen. Laws § 20-3-4](#))
- **RIMFC:** 7 - 0 in support of maintaining the moratorium until January 1, 2025 with ongoing oyster disease testing.
- **Marine Fisheries:** Support as recommended by the Council. Data shows that adult oyster density and biomass in the management area has increased from <5 m² to > 250 m², and recruitment on restoration reefs is greater than other management areas. The Division therefore purports that these areas are functioning as intended, with additional work being scoped through at least 2025. Oyster disease testing is a component (funded by NRCS) and will remain a component of this work as recommended by the Council.
- **Timing to file:** Immediately.