



RHODE ISLAND

DEPARTMENT OF ENVIRONMENTAL MANAGEMENT

OFFICE OF THE DIRECTOR

235 Promenade Street, Room 425
Providence, Rhode Island 02908

To: Conor McManus, Ph.D.
Chief, Division of Marine Fisheries

From: Terrence Gray, P.E.
Director

Date: October 11, 2023

Re: Final decisions regarding proposed and prospective regulation amendments that were subject of a public hearing held on September 11, 2023 and RI Marine Fisheries Council meeting held on October 2, 2023.

I have received and reviewed your memo to me, dated October 4, 2023 (attached), regarding the regulatory matters that were subject to a public hearing on September 11, 2023 and the RI Marine Fisheries Council (Council) meeting on October 2, 2023. I have also received and reviewed all relevant supporting documentation, including the public comments received and the draft Council meeting minutes.

The specific regulatory items, and the final decisions for each, are as follows:

1. **December 2023 harvest schedule for Greenwich Bay Shellfish Management Area**

Decision: Amend the rule as recommended by the Council and supported by the Division, which modifies the December harvest schedule for 2023 for Greenwich Bay Shellfish Management Area to be open 8am – 12pm on December 13, 15, 18, 19, 20, 21, 22, 26, 27, 28, and 29 which equals 44 hours of available harvest time.

2. **December 2023 Shellfish harvest schedule for Providence River Shellfish Management Area/Conditional area “E”**

Decision: Amend the rule as recommended by the Council and supported by the Division, which modifies the December harvest schedule for 2023 for Providence River Shellfish Management Area/Conditional area “E” as follows:

- If only seventeen (17) days were open May 21 through October 31: For the week Dec. 18 to 22, open the first two (2) nonconsecutive weekdays.

- If only sixteen (16) days were open May 21 through October 31: Adopt proposal # 1, plus provide for a 2nd day open during the week Dec. 26 to 29 by providing for opening for the first two (2) nonconsecutive weekdays.
- If only fifteen (15) days were open May 21 through October 31: Open on Tuesday, January 9 and going forward and be open the first weekday available.
- If only fourteen (14) days were open May 21 through October 31: Open Tuesday, February 6th and going forward the first available weekday.
- If only thirteen (13) days were open May 21 through October 31: Open Tuesday March 5, and going forward the first available weekday.

It is my understanding is that there is no immediate need to file this final rule, in that the next available opening per the rule is December 10. I therefore direct the Division to wait until the end of October when the number of days closed due to water quality is known before filing this final rule, so that a clear schedule is identified in the rule that reflects the above recommendation of the Council.

3. **Quonochontaug Pond Shellfish Management Area oyster moratorium**

Decision: Amend the rule as recommended by the Council and Division, which extends the oyster harvest moratorium in the Quonochontaug Pond Shellfish Management Area to November 15, 2025.

4. **Tautog tagging requirements for dealers**

Decision: Amend the rule as recommended by the Council and Division, which adds a new rule to the Division's Dealer regulations (Part 7) that states: "*No tautog shall be sold, purchased, bartered, or traded in Rhode Island unless a tautog tag issued by the Director has been affixed to the left opercula bone with the tag number displayed.*"

5. **Summer flounder packaging requirements for dealers**

Decision: Amend the rule as recommended by the Council and Divisions of Marine Fisheries and Law Enforcement, which deletes sections 7.13(F)(5) and 7.15(F)(1) from rule regarding dealer summer flounder packaging requirements as these rules have been determined to no longer be necessary and can hinder the Division of Law Enforcement's inspection operations.

6. **Striped bass finning requirements for dealers**

Decision: Amend the rule as recommended by the Council and Division, which deletes sections 7.15(D) from rule regarding striped bass finning requirements for dealers.

7. **Fishery endorsement to provide for commercial sale of species other than Finfish, Shellfish or Crustacean**

Decision: Amend the rule as recommended by the Council and Division, which amends the regulatory language for the Unlimited and Limited Finfish endorsements to provide for the commercial harvest and sale of marine species other than finfish, shellfish, and crustaceans (e.g., kelp).

8. **Standard Resident License with three (3) unlimited fishery endorsements**

Decision: Amend the rule as recommended by the Council and Division, with deletes section 2.7.3(F)(9) and the availability of the Standard Resident License with three (3) unlimited fishery endorsements.

License holders who previously held a Commercial Fishing License (CFL), or Principal Effort License (PEL) with all three fishery endorsements are now able to hold a Multipurpose fishing license (MPURP) since the statutory license re-structuring happened in 2021.

9. **Issuance of Mid-Water/Pair Trawl Endorsement**

Decision: Amend the rule as recommended by the Council and Division, which amends sections 2.7.3(D)(3), 2.7.3(F)(14), and 2.7.4(C)(2)(1)) where this endorsement language exists, to specify that this endorsement is not available for issuance until further notice. This endorsement is not currently available for issuance due to prohibition of midwater trawling in state waters.

10. **Exit:entry ratio – Standard license w/Unlimited Finfish endorsement**

Decision: Amend the rule as recommended by the Council and supported by the Division, which amends this ratio from 1:1 to 2:1, providing for the issuance of eighteen (18) new Standard Resident Licenses with Unlimited Finfish endorsement in 2024.

11. **Exit:entry ratio – Standard license w/Unlimited Shellfish endorsement**

Decision: Amend the rule as recommended by the Council and supported by the Division, which amends this ratio from 1:1 to 3:1, providing for the issuance of forty-six (46) new Standard Resident Licenses with Unlimited Shellfish endorsement in 2024.

12. **Issuance (aka “transfers) of a new license for family members or crew**

Decision: Amend the rule as recommended by the Council and Division, with deletes section 2.7.4(D) “*Issuance of a new license for family members or crew*” as unnecessary, as all eligible transfers are occurring under section 2.7.4(E) “*Issuance of*

a new license upon sale of a license holders vessel and/or gear” in which an equivalent license of the license surrendered is issued.

13. **Appeal of license renewal application denials due to Medical Hardship**

Decision: Amend the rule as recommended by the Council and Division, which deletes section 2.7.4(I) “*Appeal of license renewal application denials due to Medical Hardship*” as this rule is duplicative with statute governing this process as administered by the Division of Administrative Adjudication. It should be noted that removing this rule in no way effects an applicant’s right to appeal, in that applicants are still entitled to appeal to the Division of Administrative Adjudication on any matters concerning license determinations.

14. **Prioritization for the issuance of new licenses/endorsements – Military Service and Apprenticeship Program**

Decision: Amend the rule as recommended by the Council and Division, to provide a priority category for persons enlisted in or honorably discharged from military service, and/or who have completed a department approved commercial fishing training program.

15. **Other non-substantive clarifications in Parts 2 & 7**

Decision: Amend the rule as recommended by the Council and Division, with provides for non-regulatory clarifications and corrections to each of these rules.

16. **Multipurpose Vessel License (MVL) Program**

Decision: Amend the rule as recommended by the Division and amended by the Council which reflects the issuance of 15 licenses beginning January 1, 2024, with a term of program of December 31, 2026, at which time MVLs issued would be converted back to Multipurpose fishing licenses, and the program would then be evaluated with the aim of providing data to inform decision making in 2027.

Some elements of the proposed rule include:

- Annual fee = \$1,000 (per statute).
- Available only to natural persons who hold an Actively Fished Multipurpose Fishing License and who own a commercial fishing vessel that is commercially declared.
- Available only to persons who have actively fished license for at least five years, have been a RI resident for at least five years, and have the fishing business registered with the State of Rhode Island for five years
- A maximum of fifteen (15) licenses will be available for issuance. If the number of applications exceeds the number of licenses available for issuance, issuance shall be determined by lottery.

- Operator permit issued by the Division for a fee (\$50).
- Division-approved vessel monitoring system (VMS) device required.

This decision is the product of over four years of stakeholder engagement and industry feedback. After much deliberation, the logical next step is to test whether this program provides the staffing relief to the fishing businesses that the license is designed to achieve. The Council was divided on whether to implement a MVL License so I must weigh the input from the public comment period, history of stakeholder engagement, and feedback from legislators on this matter. This proposed rule incorporates the desires of legislators to keep the pilot program to a minimal, stakeholder requests to safeguard against any one company from monopolizing the industry and addresses industry concerns about staffing shortages.



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

INTER-OFFICE
MEMO

To: Terrence Gray, P.E., Director

From: Dr. Conor McManus, Chief

Date: October 4, 2023

Subject: Decisions regarding proposed regulation amendments that were the subject of a public hearing held on September 11, 2023 and RI Marine Fisheries Council meeting held on October 2, 2023.

The public hearing folder contains all the necessary documentation related to this hearing, including the proposed rules that were publicly noticed and the comments received. Below is a summary of the proposed amendments, including a summary of comments received and recommendations of the RI Marine Fisheries Council:

1. **December 2023 harvest schedule for Greenwich Bay Shellfish Management Area:**

- **Background/proposal:** The harvest schedules for Greenwich Bay, Bissel Cove/Fox Island and Bristol Harbor Shellfish Management Areas (aka “winter” harvest areas) are reviewed annually by the Council. The Council’s Shellfish Advisory Panel (SAP) met on September 13th and recommended no changes for Bissel Cove/Fox Island or Bristol Harbor and on a vote of 9-1 the following schedule for December 2023 for Greenwich Bay:
 - Open 8am – 12pm on December 13, 15, 18, 19, 20, 21, 22, 26, 27, 28, and 29, which equals 44 hours of available harvest time. The rule provides for a maximum of 48 hours for the month of December.
- **Public comments:** Amendments to rules in established Shellfish Management Areas are exempt from the requirements of Chapter 42-35 “Administrative Procedures” pursuant to R.I. Gen. Laws § 20-3-4). As a proposed rule was not publicly noticed, opportunity for public input was provided at the Council meeting. There were no objections to the proposed schedule provided at this meeting.

- RIMFC: 8 - 0 in support of adopting the SAP recommended schedule for Greenwich Bay.
- Marine Fisheries: Support for the Council recommendation.

2. **December 2023 Shellfish harvest schedule for Providence River Shellfish Management Area/Conditional area “E”:**

- Background: The current harvest schedule for this management area was established in rule earlier this year, with the Council having met on April 3rd to provide their recommendation. The schedule established then provided for eighteen (18) days of harvest from May 21 through October 31, with an additional three (3) days in December 2023. As of the date of the Council meeting on October 2nd, thirteen (13) of the eighteen days had been open to harvest based on rain, with one (1) to five (5) days of this period’s allotment projected to not be available to harvest based on rain closures this year. The SAP met on September 13th and discussed prospective options for proposing additional days open beyond October 31st dependent on the remaining number of the eighteen (18) days that were not available to harvest due to rainfall closures. However, no recommendation was provided from the SAP (was not a voting item on the agenda).
- Proposal (Rhode Island Shellfishermen’s Association, RISA):
 - If only seventeen (17) days were open May 21 through October 31: For the week Dec. 18 to 22, open the first two (2) nonconsecutive weekdays.
 - If only sixteen (16) days were open May 21 through October 31: Adopt proposal # 1, plus provide for a 2nd day open during the week Dec. 26 to 29 by providing for opening for the first two (2) nonconsecutive weekdays.
 - If only fifteen (15) days were open May 21 through October 31: Open on Tuesday, January 9 and going forward and be open the first weekday available.
 - If only fourteen (14) days were open May 21 through October 31: Open Tuesday, February 6th and going forward the first available weekday.
 - If only thirteen (13) days were open May 21 through October 31: Open Tuesday March 5, and going forward the first available weekday.
- Public comments: Amendments to rules in established Shellfish Management Areas are exempt from the requirements of Chapter 42-35 “Administrative Procedures” pursuant to [R.I. Gen. Laws § 20-3-4](#)). As a proposed rule was not publicly noticed, opportunity for public input was provided at the Council meeting. There were no objections to the proposed schedule provided at this meeting.
- RIMFC: 8 - 0 in support of adopting the RISA recommended schedule.
- Marine Fisheries: Support for the Council recommendation. The Division indicated it could wait to promulgate the RISA sub-proposal that corresponds to the final number of day of harvest lost due to rain closure once that information is definitive (as opposed to providing a series of if/else rules in regulation immediately).

3. **Quonochontaug Pond Shellfish Management Area Oyster Moratorium:**

- **Background:** An oyster harvest moratorium has been in place since 2010 to support oyster restoration work, initiated by the Division due to lack of wild populations as determined by Division surveys. The current moratorium expires November 15, 2023.
- **Proposal:** Division proposal to extend moratorium through November 15, 2025 to support continued restoration efforts and assessments.
- **Public comment:** Amendments to rules in established Shellfish Management Areas are exempt from the requirements of Chapter 42-35 “Administrative Procedures” pursuant to R.I. Gen. Laws § 20-3-4). As a proposed rule was not publicly noticed, opportunity for public input was provided at the Council meeting. There were no objections to the proposed schedule provided at this meeting. The SAP reviewed the Division proposal at its September 13th meeting and voted 10-0 in support.
- **RIMFC:** 8 – 0 in support of the Division proposal.
- **Marine Fisheries:** Support as proposed.

4. **Tautog tagging requirements for dealers:**

- **Background:** Dealer rules are not in sync with harvester rules regarding tautog tagging requirements. A workshop was held on July 10th seeking public input.
- **Proposal:** Division proposal to add new rule to Part 7 **“No tautog shall be sold, purchased, bartered, or traded in Rhode Island unless a tautog tag issued by the Director has been affixed to the left opercula bone with the tag number displayed.”**
- **Public comment:** None provided.
- **RIMFC:** 8 – 0 in support as proposed.
- **Marine Fisheries:** Support as proposed.

5. **Summer flounder packaging requirements for dealers:**

- **Background:** The Division of Law Enforcement has indicated that summer flounder packaging requirements as specified in rule is no longer necessary and can hinder inspection operations. A workshop was held on July 10th seeking public input.
- **Proposal:** Division proposal to delete sections 7.13(F)(5) and 7.15(F)(1) from rule regarding dealer summer flounder packaging requirements.
- **Public comment:** None provided.
- **RIMFC:** 8 – 0 in support as proposed.
- **Marine Fisheries:** Support as proposed.

6. **Striped bass finning requirements for dealers:**

- Background: With new recreational slot limit recently adopted for striped bass, there is no longer an overlap between the general category commercial and recreational sizes, resulting in the rule regarding recreational striped bass being finned no longer needed. A workshop was held on July 10th seeking public input.
- Proposal: Division proposal to delete section 7.15(D) regarding dealer striped bass finning requirements.
- Public comment: None provided.
- RIMFC: 8 – 0 in support as proposed.
- Marine Fisheries: Support as proposed.

7. **Licensing fishery endorsement to provide for commercial sale of species other than finfish, shellfish or crustacean:**

- Background: Rules do not currently provide for a license for the commercial harvest and sale of marine species other than finfish, shellfish, and crustacean (e.g., rockweed, kelp). A workshop was held on July 10th seeking public input.
- Proposal: Division proposal to include language “and marine species other than finfish, shellfish and crustacean” to the Unlimited and Limited Finfish endorsements to provide for the commercial harvest and sale of marine species other than shellfish and crustacean.
- Public comment: None provided.
- RIMFC: 8 – 0 in support as proposed.
- Marine Fisheries: Support as proposed.

8. **Standard Resident License with three (3) unlimited fishery endorsements:**

- Background: License is no longer available for issuance. License holders who previously held a Commercial Fishing License (CFL), or Principal Effort License (PEL) with all three fishery endorsements now hold a Multipurpose fishing license (MPURP) since license re-structuring. A workshop was held on July 10th seeking public input.
- Proposal: Division proposal to delete section 2.7.3(F)(9) “Standard Resident License with three (3) unlimited fishery endorsements: Four hundred fifty dollars (\$450.00).”
- Public comment: None provided.
- RIMFC: 8 – 0 in support as proposed.
- Marine Fisheries: Support as proposed.

9. **Issuance of Mid-Water/Pair Trawl Endorsement:**

- Background: This endorsement is not currently available for issuance due to prohibition of midwater trawling in state waters. There is confusion amongst applicants looking to purchase this endorsement with current rule in place. A

workshop was held on July 10th seeking public input.

- Proposal: Division proposal to amend sections 2.7.3(D)(3), 2.7.3(F)(14)), and 2.7.4(C)(2)(1)) where this endorsement language exists, to specify that this “endorsement is not available for issuance until further notice.”
- Public comment: None provided.
- RIMFC: 8 – 0 in support as proposed.
- Marine Fisheries: Support as proposed.

10. **Exit:entry ratio for the issuance of the Unlimited Finfish endorsement:**

- Background: Annual review of the ratio. A workshop was held on July 10th to solicit public input. 33 licenses not renewed/retired in 2023. The current ratio is 1:1.
- Proposal: Industry proposal to amend ratio from 1:1 to 2:1.
 - At status quo 1:1, **33** new Standard Licenses with Unlimited Finfish endorsement would be available for issuance in 2024.
 - At proposed 2:1, **18** new Standard Licenses with Unlimited Finfish endorsement would be available for issuance in 2024 (round up by 3’s).
- Public comment: Two (2) comments in support as proposed.
- RIMFC: 4-3-1 in support of amending the ratio from 1:1 to 2:1 as proposed.
- Marine Fisheries: Amenable to either proposal.

11. **Exit:entry ratio for the issuance of the Unlimited Shellfish endorsement:**

- Background: Annual review of the ratio. A workshop was held on July 10th to solicit public input. 138 licenses not renewed/retired in 2023. Upon review of the 2023 license renewals, it was found that ~ 50 of the license holders who did not renew their unlimited shellfish endorsement in 2023 purchased an Over 65 Shellfish license. This was most likely due to the cost and the reporting requirement for the unlimited shellfish endorsement. The current ratio is 1:1.
- Proposal: Industry proposal to amend ratio from 1:1 to 3:1.
 - At status quo 1:1, **138** new Standard Licenses with Unlimited Shellfish endorsement would be available for issuance in 2024.
 - At proposed 3:1, **46** new Standard Licenses with Unlimited Shellfish endorsement would be available for issuance in 2024.
- Public comment: No comments provided.
- RIMFC: 8-0 in support of amending the ration from 1:1 to 3:1 as proposed.
- Marine Fisheries: Amenable to either proposal.

12. **Issuance (aka “transfers) of a new license for family members or crew:**

- Background: Rule is not necessary as all license “transfers” are processed under rule 2.7.4(E) “*Issuance of a new license upon sale of a license holders vessel and/or gear*” as requirements for a license transfer are less restrictive

than requirements as provided in section 2.7.4(D) “*Issuance of a new license for family members or crew*”. A workshop was held on July 10th seeking public input.

- Proposal: Division proposal to delete section 2.7.4(D) “*Issuance of a new license for family members or crew.*”
- Public comment: None provided.
- RIMFC: 8 – 0 in support as proposed.
- Marine Fisheries: Support as proposed.

13. **Appeal of license renewal application denials due to medical hardship:**

- Background: This process is administered by the Division of Administrative Adjudication via statute (§ 20-2.1-2 “Purposes.” and § 20-2.1-4 “Licenses – General provisions governing licenses issued.”) and not by the Licensing office. The rule mimics statute, therefore removal of the rule has no bearing on the process, and is therefore not needed. A workshop was held on July 10th seeking public input.
- Proposal: Division proposal to delete section 2.7.4(I) “Appeal of license renewal application denials due to Medical Hardship.”
- Public comment: None provided.
- RIMFC: 8 – 0 in support as proposed.
- Marine Fisheries: Support as proposed.

14. **Prioritization for the issuance of new licenses/endorsements – Military Service and Apprenticeship Program:**

- Background: Recent amendments to statute (R.I. Gen. Laws § 20-2.1-5(5)(i)) require that the rules provide for priority categories for persons enlisted in or honorably discharged from military service, and/or who have completed a Department approved commercial fishing training program. A workshop was held on July 10th seeking public input.
- Proposal: Division proposal to include active members of the military, military veterans who have been honorably discharged, and persons that hold a valid certificate from an accredited commercial fishing apprenticeship program approved by the Department as the 3rd priority category.
- Public comment: One (1) comment in support as proposed.
- RIMFC: 8 – 0 in support as proposed.
- Marine Fisheries: Support as proposed.

15. **Other non-substantive clarifications in Parts 2 & 7:**

- Background/proposal: Minor non-substantive changes involving reorganization, new numbering, and/or grammatical corrections.
- Public comment: None provided.

- RIMFC: Support as proposed/approved by consent.
- Marine Fisheries: Support as proposed.

16. Multipurpose Vessel License:

- Background: This license type has been in rule since July 1, 2022, with the current rule only identifying the license type and indicating no issuance would take place until January 1, 2024. The current rule (no issuance until January 1, 2024) was the RIMFC's recommendation last year, where this rule and one posed by the Division to issue licenses in 2023 were workshopped, noticed, and received public comment. The Division held a workshop on July 10th, 2023 to further solicit input on revisions to its proposal, which were the product of additional engagement and comments from stakeholders and legislative representatives.
- Proposal: Three (3) proposals were identified for consideration in the notice:
 - Proposal # 1: Division proposal for the issuance of 15 licenses beginning January 1, 2024, with a term of program of December 31, 2026, at which time MVLs issued would be converted back to Multipurpose fishing licenses, and the program would then be evaluated with the aim of providing data to inform decision making in 2027. Some elements of the proposed rule include:
 - Annual fee = \$1,000 (per statute).
 - Available to natural persons who hold an Actively Fished Multipurpose Fishing License and who own a commercial fishing vessel that is commercially declared.
 - A maximum of fifteen (15) licenses will be available for issuance. If the number of applications exceeds the number of licenses available for issuance, issuance shall be determined by lottery.
 - Operator permit issued by the Division for a fee (\$50).
 - Division-approved vessel monitoring system (VMS) device required.
 - Proposal # 2: Industry proposal that zero (0) licenses would be available for issuance indefinitely.
 - Proposal # 3: Industry proposal that seventy (70) would be available for issuance beginning January 1, 2024, with no term of program; other elements of the Division proposal incorporated.
- Public comment:
 - Four (4) comments in support of industry proposal # 2; no issuance indefinitely.
 - Four (4) comments in support of industry proposal # 3: 70 licenses available for issuance in 2024; indefinite term of program
- RIMFC: Two votes were held by the Council:

- (1) 4 – 4 to recommend adoption of Industry Proposal # 2
- (2) 4 – 4 to recommend adoption of Division Proposal # 1, with the following modification: Eligibility for persons with a vested interest in a business: must have an actively fished license for at least five years, be a RI resident for at least five years, and have that business registered with the state of RI for at least 5 years.
- Marine Fisheries: The Division continues to see merit in its proposal, particularly as a product of incorporating additional industry feedback that includes further restrictions and limitations, one of which would now would be to conduct it as a pilot program. The Division stressed to the Council the intent of the rule is and has been to help enhance flexibility for the industry.