

Public Doctrine

Rhode Island uses the **public trust doctrine** to determine ownership rights along the coastline. This doctrine states that the submerged land is owned in public trust, and owners of the beach cannot prevent the public from using this land (and the water above it)¹². The public trust doctrine is rooted in English common law, the colony's 1663 charter, and the Rhode Island Constitution. It considers that some resources are so important that we entrust them to the government to maintain for the people².

The public trust doctrine is enforced by the judiciary rather than the legislature, so the extent of the applicability of the Public Trust Doctrine can only be determined by state court decisions¹. The public rights guaranteed by the public trust doctrine are enforceable in the courts

Under a legal principle called public trust doctrine, the government has an obligation to protect and maintain state-owned natural and cultural resources that are preserved for public use. The coastal fishery resources are held by the state in trust for the benefit of all current and future citizens.

Hypoxia is the latest catch word for researchers and DEM.

Nitrogen removal has become the only method being used to combat hypoxia and it is being taken to extremes.

Considering all the information presented at these meetings hypoxia events are the exception and not the rule.

Other states figure shellfish into their nitrogen reduction efforts RI DEM does not.

There may be more than one cause of the failing shellfish industry but nitrogen reduction is the one thing that can be easily addressed and is directly connected to phytoplankton production in the bay.

Phytoplankton availability is directly connected to shellfish health, growth, and spawning.

There is not one person at DEM that is accountable for the prosperity of the shellfish industry.

This industry can no longer afford to have different offices in DEM making independent decisions without considering the affect on the wild harvest shellfish industry.

I am waiting for the numbers to be posted on the ACCSP website but 2023 will have recorded the lowest quahog harvest in history.

The RI Shellfish Management Plan (final draft presented in November 2014)

Based on nitrogen enrichment patterns in quahogs, Oczkowski et al. (2008) suggested that Narragansett Bay clams feed upon phytoplankton grown in the upper bay on anthropogenic nitrogen, and therefore the majority of their food is from sewage derived nitrogen. One analysis of the planned 50% reduction in nitrogen from Upper Bay Waste Water Treatment Facilities during the summer months suggest some decline in clam productivity in Narragansett Bay. However, it should also be mentioned that decreasing nitrogen and increasing dissolved oxygen will likely increase larval survivability and may increase secondary productivity. Note that the state's dissolved oxygen standard is established based on data and analysis aimed at increasing larval survivability.

These two conclusions contradict each other. How can you have a decline in productivity and increase in larval survivability.

It is blatantly obvious to the shell fishermen that the supposition of decreasing nitrogen and increasing dissolved oxygen will likely increase larval survivability and may increase secondary productivity is false. Larval survivability in areas A, B, and the lower bay have not increased but have drastically decreased. Increasing nitrogen levels will not affect access to area E.

DEM has a history of making promises and then not following through.

In the spring of 2017 RI DEM signed on to The RI Shellfish Initiative and it says the state should invest in seed production infrastructure and programs. It has not.

The RI SMP under recommendations

#14 Give state support for the concept of a public-private hatchery for quahogs, oysters, and bay scallops in order to support the wild harvest industry growth and sustainability. Again, it has not.

#91 A dialog should be started that addresses the need to not excessively reduce nutrient inputs to Narragansett Bay during winter months so that sufficient nutrients are available to primary producers to fuel critical winter-spring phytoplankton blooms. There may be research needed to define what a "critical level" of nutrients is and should include need for research on nitrogen reduction leading to bivalve food limitation.

Again, it has not.

RI SMP Section 920.1 #3

The Rhode Island General Assembly emphasized in its legislative findings in regards to fish and wildlife that the state's animal life – including the fishery resources – must be "developed, preserved, and maintained for the beauty and mystery that wild animals bring to our environment." Additionally, in creating the Coastal Resources Management Council, the General Assembly declared it to be the policy of the state to "preserve,

protect, develop, and, where possible, restore the coastal resources.” These provisions call, generally, for protection of the ecological integrity of the resource – preservation of the state’s resources in their natural state – to be balanced against human interests in utilization of the resource. Specifically, in regards to fisheries, the needs to protect the ecological integrity as well as the industry must be balanced in management strategies to “prevent overfishing, while achieving, on a continuing basis, the optimum yield from each fishery.”

DEM’s management strategies have not been balanced.

You say that you listen to the fishermen but our needs have not and are not being met.