



RHODE ISLAND
DEPARTMENT OF ENVIRONMENTAL MANAGEMENT

OFFICE OF THE DIRECTOR

235 Promenade Street, Room 425
Providence, Rhode Island 02908

To: Jason McNamee
Chief, Marine Resource Management

From: Janet Coit
Director

Date: May 4, 2016

Re: Final Decisions Pertaining to March 23, 2016 and April 20, 2016 Marine Fisheries Public Hearing Items; and Quonochontaug Pond Oyster Moratorium

I have received and reviewed your memo to me, dated April 26, 2016 and attached herewith, regarding the seven public hearing items from the March 23, 2016 public hearing; the one public hearing item from the April 20, 2016 public hearing; and the Quonochontaug Pond Oyster Moratorium. With that memo, I have also received and reviewed all relevant supporting documentation, including the March 23, 2016 and April 20, 2016 public hearing documents and public hearing comments, and the summary report from the April 20, 2016 meeting of the RI Marine Fisheries Council.

I hereby approve all of the recommendations, applicable for 2016, as set forth in your memo. With a few minor exceptions, noted herein, all of your recommendations are consistent with the recommendations of the RI Marine Fisheries Council, rendered at their April 20, 2016 meeting. The specific regulatory items, and the final decisions for each are as follows:

1. **Menhaden Regulations – General Editing:**

- Decision: Adoption of new regulations (all involving clarification and streamlining, no substantive changes) as revised per public hearing process.

2. **Commercial Menhaden Regulations:**

- Decision: Status quo

3. **Recreational Menhaden Regulations:**

- Decision: Adoption of new regulations, as revised by the Division and recommended by the Council, which:
 - Establish an unlimited possession limit for menhaden up to 4” in size; and
 - Establish a possession limit of 200 fish/person/day for menhaden over 4” in size;
 - With a year-round season

4. **Horseshoe Crab Regulations:**

- Decision: Status quo
 - Comment: I recognize and support the need for management reforms for this fishery; and further recognize and support the Council's advice to table the matter until next fall, by which time the Division will develop a modified set of regulatory proposals for consideration via a subsequent public notice and hearing process.

5. **Jonah/Cancer Crab Regulations:**

- Decision 1: Adoption of new regulations pertaining to Jonah crabs, as proposed, which:
 - Establish a minimum size of 4.75" carapace width;
 - Establish an unlimited possession limit for holders of lobster trap allocations (fishing with tagged lobster traps);
 - Establish an 1,000 crab possession limit for *non-trap gear* (i.e., otter trawl and gillnet);
 - Establish an 1,000 crab possession limit for *non-lobster trap gear* (e.g., fish/whelk pots);
 - Establish a recreational possession limit of 50 crabs/person/day (no license required);
 - Prohibit the harvest and possession of egg-bearing females;
 - Require that only whole crabs may be retained and sold (i.e., prohibit the possession of crab claws or other body parts); and
 - With a year-round season.
- Decision 2: Adoption of a June 1, 2016 control date for the commercial rock crab fishery.
 - Comment: I concur with your recommendation, consistent with the Council's consideration, not to enact any of the other proposed regulations for the rock crab fishery at this time. I support your intent to further develop the proposed regulatory program for consideration via a subsequent public comment and hearing process.

6. **Gillnet Regulations:**

- Decision 1: Codification of existing federal regulations pertaining to gillnets, already applicable in Rhode Island waters, in Rhode Island's marine fisheries regulations. They are as follows:
 - Pattern – Must be set in a straight line;
 - March closure – Setting of nets prohibited during the month of March, annually;

- Weak links – Breaking strength must be $\leq 1,100$ pounds. Buoys and weights must be attached to buoy line with a weak link. Weak links on float line must be compliant with ALWTRP;
- Anchors – Gillnets remaining in water must be anchored at each end with anchors that have a holding power of at least a 22-pound Danforth-style, burying anchor (no dead weights);
- Marking of nets:
 - Color coding – Buoy lines must be marked with 3 individual green-colored marks measuring 12 inches; one at the top, one at the midway point, and one at the bottom of each buoy line;
 - Pingers – Required; must be properly attached between 1/21-2/29 and between 4/1-5/31, annually; pingers must be attached at the end of each string of each gillnet and at the bridle of every net within a string of nets; pingers must be maintained in an activated state at all times; pingers must broadcast a 10 kHz (+/- 2kHz) sound at 132 dB (+/- 4 dB) re 1 micropascal at 1 m, lasting 300 milliseconds (+/- 15 milliseconds) and repeating every 4 seconds (+/- 0.2 seconds)
- Comment: As noted in your memo, and consistent with the Council’s recommendation, these regulations are not to be imposed north of the Colregs line in a manner that is inconsistent and/or broader than existing federal requirements.
- Decision 2: Adoption of new regulations, as proposed, which;
 - Establish a maximum net length limit of 3,000 linear feet;
 - Maintain status quo requirement for the tending of small mesh nets ($<10''$), i.e., that they must be hauled once each day;
 - Establish a new requirement for the tending of large-mesh nets ($\geq 10''$), namely, that they must be hauled at least once every 7 days;
 - Require all nets to be tagged every 300 linear feet;
 - Establish an 80 tag limit per eligible license holder/vessel, plus an additional 10 tags for routine loss; and
 - Establish a net tag application period of 11/1-2/29 for the following fishing year, with tags being valid for 2 years.

7. **Adoption of Part 6 – General Equipment Provisions, and repeal of Part X - Equipment Restrictions, Part XI – Commercial Fisheries, Part XIII – Gill Net Regulations, and Part XIV – Fish Traps:**

- Decision: Adoption of new regulations (all involving clarification and streamlining, no substantive changes) as proposed.

8. **Recreational Black Sea Bass Regulations:**

- Decision: Adoption of new regulations, as follows:
 - 15” minimum size;
 - 3-fish possession limit from June 24 – August 31; and
 - 7-fish possession limit from September 1 – December 31

- Comment: I recognize that the Council recommended consideration of an additional LOA program for the for-hire sector, as an alternative to the above-noted general fishery regulations, but that you found that the program (3-fish possession limit from August 1-31, then a 10-fish limit from September 1 – December 31) would not be an agreeable or equitable program for that sector; as such, it will not be offered as an option.
9. **Quonochontaug Pond Oyster Moratorium:** (not subject to public notice or hearing given status of pond as a shellfish management area)
- Decision: Extension of existing prohibition on the harvest of oysters for an additional five years.



RHODE ISLAND
DEPARTMENT OF ENVIRONMENTAL MANAGEMENT

DIVISION OF FISH & WILDLIFE / MARINE FISHERIES

Three Fort Wetherill Road
Jamestown, Rhode Island 02835

INTER-OFFICE MEMO

TO: Janet Coit, Director
FROM: Jason McNamee, Chief
DATE: May 3, 2016
SUBJECT: Update regarding proposed regulations for Jonah Crab

Please be advised that as of today, the ASMFC announced via press release that Addendum 1 of the Jonah Crab FMP was passed with the following amendments.

The base Jonah Crab FMP linked the crab fishery to the lobster fishery via lobster trap allocation (LTA) and trap tags (i.e., crabs to be harvested only from tagged lobster pots). The base FMP also provides for an unlimited possession limit for LTA holders, sets minimum sizes, and prohibitions on retention of egg bearing crabs.

While providing a 200/day or 500/multiday trip possession limit for otter trawl and gillnet possession (now classified in the FMP as *non-trap gear*), the FMP was largely silent on *non-lobster trap gear* (e.g., fish/whelk pots). Addendum 1 corrects this problem by providing for participation by *non-lobster trap gear* with a 1,000 crab/day possession limit. As part of this amendment, the 200/500 limit for *non-trap gear* was also changed to 1,000/day.

The compliance date for the base FMP is June 1, 2016, and January 1, 2017 for the addendum approved last week. However, we believe it best to wrap both base FMP and addendum compliance into one package of regulations for adoption now. The 1,000 crab limit was not specifically noticed for Jonah crabs explicitly, it was noticed as part of the generalized “cancer crab” regulations which is inclusive of Jonah crabs and is now part of the FMP and should be adopted both for compliance and to provide for participation by *non-lobster trap gear*. We believe this was also the Council’s intent when voting unanimously to adopt Jonah crab compliance measures.



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DEPARTMENT OF ENVIRONMENTAL MANAGEMENT
DIVISION OF FISH & WILDLIFE / MARINE FISHERIES
Three Fort Wetherill Road
Jamestown, Rhode Island 02835

INTER-OFFICE MEMO

TO: Janet Coit, Director

FROM: Jason McNamee, Chief

DATE: April 26, 2016

SUBJECT: Request for decision regarding proposed amendments to the RI Marine Fisheries regulations

Marine Fisheries conducted a public hearing on March 23rd and April 20th, 2016 on the subject matters identified below, which were subsequently deliberated by the RI Marine Fisheries Council at their April 20th, 2016 meeting. At their meeting on April 20, the Council also heard a presentation from Marine Fisheries regarding a proposed continued oyster harvest moratorium in the Quonochontaug Pond Shellfish Management Area.

1. **Gen. edits – RIMFR Part XVI - Menhaden Regulations:** Regulations proposed for improved clarity and readability of the regulation consistent with on-going regulatory re-write efforts.
 - **Public comment:** Comment submitted regarding need for additional clarifications.
 - **Council:** Motion to recommend adoption of the proposal as revised passed 5 – 0 (B. Mackintosh and C. Rein absent).
 - **Marine Fisheries:** Marine Fisheries worked with the commenter and revised the language. The revisions were approved by DEM Law Enforcement and Legal, **therefore Marine Fisheries supports filing the proposed revisions as supported by the Council.** Additionally, it was determined that the regulations regarding the *Harvest of menhaden in permanently closed areas* may require additional revisions regarding the use of gear other than non-directed gear, but such revisions were not within the scope of this hearing. As such this matter has been placed in Marine Fisheries regulatory queue for potential later rule-making.
 - **Timing to file:** Immediately.

2. **Commercial Menhaden (RIMFR Part XVI - Menhaden Regulations):**
 - **Options proposed:**
 - **Option 1:** Status Quo (Marine Fisheries)
 - **Option 2:** Industry proposal as follows:

<u>Trigger</u>	<u>Pounds</u>
Biomass "Floor"	2,000,000 <u>1,500,000</u>
Biomass "Ceiling"	1,500,000 <u>1,000,000</u>

- **Public comment:** 1 comment from RISAA in support of SQ.
- **Council:** Motion to recommend adoption of option 1 (SQ) passed 5 - 0.
- **Marine Fisheries:** **Marine Fisheries supports remaining at Status Quo.** While Marine Fisheries could manage the proposed change by industry it would make management more difficult for a species that can have large swings in biomass in very short amounts of time. Additionally, the reasoning behind the change was not biologically based, but based on a desire to incur fewer closures during the year, therefore Marine Fisheries does not have data driven support to change management at this point.
- **Timing to file:** Immediately.

3. **Recreational Menhaden (RIMFR Part XVI - Menhaden Regulations):**

- Option proposed by Marine Fisheries:

<u>Min. size</u>	<u>Season</u>	<u>Possession Limit</u>
<u>No min. size</u>	<u>Open year round</u>	<u>200 fish*</u>

- **Public comment:** RISAA: 200 fish/person/day.
- **Council:** Motion to recommend adoption as offered and revised by Marine Fisheries (see below) passed 5 – 0.
- **Marine Fisheries:** Marine Fisheries, after considering feedback that a 200 fish limit on small menhaden may adversely impact existing practices while not doing much to promote conservation, offered for the Council’s consideration that the 200 fish limit need not apply to menhaden less than 4” in length. **Marine Fisheries** offered support for an unlimited possession limit for the smaller fish (as recreational impact to menhaden is negligible), and therefore **supports the recommendation per the Councils advice.**

<u>Size</u>	<u>Season</u>	<u>Possession Limit</u>
<u>0 – 4”</u>	<u>Open year round</u>	<u>Unlimited</u>
<u>> 4”</u>		<u>200/person/day</u>

- **Timing to file:** Immediately

4. **Horseshoe Crab (RIMFR Part 5 – Lobster Crabs and Other Crustaceans):**

- **Options presented at hearing:**
 - **Option 1:** Status Quo - no daily commercial possession limit.

- **Option 2:** Establish a commercial possession limit of 60 crabs/person/day.
- **Public comment:** Support/minimal opposition for the proposed possession limit.
- **Council:** Motion to recommend tabling proposed regulations until the November hearing passed 5 - 0.
- **Marine Fisheries:** Marine Fisheries supports the proposal as a means to provide for both better commercial access to the fishery and improved management. As currently managed, and combined with a very low quota, the fishery is difficult to manage. The quota is consistently exceeded in only a few days, which limits most fishermen's ability to access the fishery for personal use as bait, and results in exceedances that must be remedied in the following year. Despite the identified need for management changes, **Marine Fisheries support's Councilman Grant's position that the matter can be tabled** for now and regulations can be further developed and brought back to hearing in late fall. Even if regulations were to be filed at this point, the regulatory change would most likely not be effective until after the bulk of the horseshoe crab bait season was over, therefore the delay will not impact the 2016 fishery.
- **Timing to file:** N/A (Status Quo for now).

5. **Jonah/Cancer Crab (RIMFR Part 5 – Lobster Crabs and Other Crustaceans):**

- **Public comment:** Broad and varied. Refer to written comments received and summary of oral comments (from hearing).
- **Council:**
 - Regarding the ASMFC requirements for Jonah Crab, a motion was made to recommend adoption of the regulations as proposed passed 5 – 0.
 - Regarding the additional requirements proposed by Marine Fisheries for both Cancer Crab species, a motion was made to adopt the regulations as proposed, less the 1,000 crab possession limit for non-LTA holder's, where the recommendation is that the possession limit be unlimited. The motion failed 0 – 5. A second motion was then made to only adopt the June 1, 2016 control date for Atlantic Rock Crab, but no other provisions for Cancer crab. The motion passed 5 – 0.
- **Marine Fisheries:** **Marine Fisheries supports the motions as passed by the Council**, namely adopt the Jonah crab requirements and the control date for the Atlantic rock crab fishery. One additional recommendation, **Marine Fisheries suggests withholding the possession limit portion of the Jonah crab regulations at this point pending the outcome of the ASMFC Addendum I process**, which should conclude at their May meeting. The state is not under any obligation to manage the rock crab fishery at this time, but was proposing to do so in an effort to provide effective management for the entire mixed crustacean fishery. As a mixed species fishery involving the same gear, effort controls focused on trap gear for lobsters can be weakened by lack of management on gear used in the crab fishery. The motions as passed by the Council will meet our obligations per the ASMFC Fishery Management Plan for Jonah crabs, and the control date will give us flexibility in how to manage the rock crab fishery while providing time to construct a management plan that takes into account those issues learned during the public

hearing process. We will place the rock crab plan in our regulatory queue for a future hearing, most likely November of 2016.

- **Timing to file:** Immediately.

6. **Gillnet regulations:**

- **Public comment:** Broad and varied. Refer to written comments received and summary of oral comments (from hearing).
- **Council:**
 - Regarding the federal gillnet regulations currently in place, a motion was made to recommend adoption of the regulations as proposed passed 5 – 0. Also part of this motion was to not impose any regulations north of the Colregs line that are inconsistent and/or broader than the federal requirements.
 - Regarding the proposed new regulations proposed by Marine Fisheries, motion was made to recommend adoption of the regulations as proposed, minus the control date and owner/operator provisions, passed 5 – 0.
- **Marine Fisheries: Marine Fisheries supports the changes as proposed, less the control date and owner/operator provisions as recommended by the Council.**

The large whale provisions that are exempted north of the Colregs line in the federal regulations can be accommodated with a minor addition to the proposed language, and Marine Fisheries recommends clarifying this language to better reflect the federal plan for whales and porpoises. Regarding the most restrictive rule and its impacts on state waters fishermen, Marine Fisheries contends that the proposed regulations will provide greater protection to state waters fishermen from large influxes of effort from federal waters, which can occur under the current program that does not contain net limits. At this time, Marine Fisheries does not see the need to create a program that restricts federal fishermen from their existing program requirements while fishing in federal waters. As was the case in the recent decision for skate fishing in state waters, Marine Fisheries will closely monitor the fishery in 2016 for behavior changes detrimental to state waters fishing practices, and will address these concerns in a subsequent action, if needed.
- **Timing to file:** Immediately.

7. **Proposed adoption of RIMFR Part 6 – General Equipment Provisions, and repeal of Part X - Equipment Restrictions, Part XI – Commercial Fisheries, Part XIII – Gill Net Regulations, and Part XIV – Fish Traps:**

This proposal is part of Marine Fisheries continued regulatory re-write effort designed to streamline RIMFR regulations for improved clarity and readability. No significant content changes were made; contents of the repealed regulations in their entirety are to be transferred to the new regulation.

- **Public comment:** None.
- **Council:** Motion to recommend adoption as proposed passed 5 - 0.
- **Marine Fisheries:** Supports the changes as proposed.
- **Timing to file:** Immediately.

8. **Recreational Black Sea Bass:**

- **Options presented at hearing:**

Proposed Options	Min. Size	Season/Possession Limit (person/day)
Option 1:	14" 15"	7/2 6/15 – 8/31: 1 2 fish 9/1 – 12/31: 7 fish
Option 2:	14" 15"	7/2 6/24 – 8/31: 1 3 fish 9/1 – 12/31: 7 fish
Option 3:	14"	7/2 – 8/31: 1 fish 9/1 – 12/31: 7 fish 7/11 – 12/31: Three (3) fish
Option 4:	14"	7/2 – 8/31: 1 fish 9/1 – 12/31: 7 fish Gen. Rec: 7/5 – 12/31: Three (3) fish P/C: 8/1 – 8/31 @ 2 fish 9/1- 12/31 @ 5 fish

- **Public comment:** Majority of comments in support of option 2; rec. fishermen in support of option 2; Party and Charter fishermen (P/C) in support of option 2 and an LOA program if feasible.
- **Council:** Motion to recommend adoption of option 2 with LOA program for P/C passed 5 - 0.
- **Marine Fisheries:** Marine Fisheries supports the Council recommendation of **option 2**. Upon analysis, it was found that an LOA program would result in, at best, a program that did not start until August 1 for P/C participants, with a starting limit of 3 fish in August and increasing to 10 fish on September 1. Marine Fisheries believes that the disparity between the loss of an open early season at 3 fish for the tradeoff of an additional 3 fish in waves 5 and 6 (from 7 to 10 fish) would not be an agreeable or equitable program for the P/C mode, and therefore our recommendation is option 2 without the addition of an LOA program.
- **Timing to file:** Immediately.

9. **Quonochontaug Pond Oyster moratorium:**

The current moratorium expires on September 15 of this year. Marine Fisheries presented to the Council the need to extend the moratorium in order to assure that restoration and fish habitat enhancement efforts can be maintained and expanded, and to assure that such efforts are properly monitored to measure success of these efforts. Please note that this matter was not brought to hearing due to your authority as established under RIGL §20-3-4 *Shellfish and marine life management areas*.

- **Public comment:** None (i.e., no comments from the public at the Council meeting).
- **Council:** Motion to recommend extension of the moratorium for an additional 5 years passed 5 - 0.

- **Marine Fisheries:** Support as proposed and per the Council recommendation. The continued moratorium is critical to the success of restoration and fish habitat enhancement efforts.
- **Timing to file:** Immediately.