



Rhode Island
Department of Environmental Management

DIVISION OF FISH AND WILDLIFE

Marine Fisheries
3 Ft. Wetherill Road
Jamestown, RI 02835

401 423-1920
FAX 401 423-1925
TDD 401 222-4462

TO: W. Michael Sullivan, Director, DEM

FROM: Robert Ballou, Acting Chief, DFW *Robert J. Ballou*

DATE: April 30, 2010

SUBJECT: Request for Decision on February 23, 2010 Marine Fisheries Public Hearing Item – Summer Flounder Sector Allocation Program for 2010

A number of proposed regulatory changes pertaining to the 2010 marine fisheries season have moved through the regulatory review process, been presented for final decision, and been enacted. One item – the proposal to continue/expand/modify the summer flounder sector allocation program in 2010 – has remained pending. That item is hereby presented for final decision.

The matter was the subject of a public hearing held on February 23, 2010, and subsequent consideration by the RI Marine Fisheries Council at their March 1, 2010 meeting. Supporting documentation submitted along with this memorandum include minutes of the RIMFC summer flounder advisory panel meeting, the public hearing summary document, a summary of public hearing comments, and the applicable portion of the minutes from the RIMFC March 1, 2010 meeting.

Having reviewed the entire record, conferred with staff, and consulted closely with you, I hereby urge adoption of modified version of the summer flounder sector allocation program in 2010. The provisions of the program are summarized below and detailed in the attached annotated regulatory document. If you concur, please indicate by affirming this memo and returning it to me. Upon receipt of the affirmed memo, I will initiate the filing process. If you wish to make any changes that differ from those proposed, please delineate those changes as amendments to this memo.

Background

The pilot program for 2009 was extensively analyzed via a detailed report prepared by staff (*Final Report on the 2009 Sector Allocation Pilot Program*, RI Division of Fish & Wildlife, 23 February 2010). That report was presented, in final draft form, at a Roundtable meeting on February 18, 2010; entered into the public hearing record; presented to the RI Marine Fisheries Council; and posted on the Department's website. The primary conclusion of the report is that the 2009 pilot program had a positive effect on the summer flounder resource by dramatically

reducing discards. An additional finding was that the program proved successful with regard to the quality of reporting.

The 2009 program was also extensively vetted, not only through the standard Administrative Procedures Act and RIMFC review processes, but also at a well-attended Roundtable meeting, devoted solely to the review of the program and the consideration of a continued/expanded/ revised program for 2010. The summary of that meeting was incorporated into the public record.

At their March 1, 2010 meeting, the Marine Fisheries Council devoted considerable time and energy to the issue, and endeavored to reach consensus on a recommendation. However, the Council deadlocked (3-3 vote) on a recommendation.

Despite the broad range of opinions offered at the meetings and hearings, and null vote of the Council, the record provided many constructive comments that we have drawn upon in formulating the proposed program for 2010.

The most challenging factor we faced this year was the timing of the decision. Our workload during March and April was massive, involving regulatory decisions and associated implementation steps for twelve commercial and recreational marine fishery programs, among many other things. We recognized the importance of undertaking a comprehensive, thoughtful review of the extensive public record pertaining to the summer flounder sector allocation program before offering a recommendation, and so we put considerable time and effort into the review and the consideration of options and alternatives. Yet as our deliberations moved into the month of April, it became increasingly apparent that a program similar to last year would not be feasible, given the framework of the general category fishery, particularly the April 30 end date for the winter I sub-period. And so we shifted our focus to a modified pilot program that would span the summer and winter II sub-periods. We came to the conclusion that such a modified program had merit, and was workable. Accordingly, we are hereby proposing such a program.

While we feel that the modified program proposal constitutes a sound way to proceed for the remainder of 2010, we feel strongly that we should also spend the remainder of 2010 working, through an open, public process, on a broad-based framework proposal for 2011. We need to get that proposal developed by the end of the summer, reviewed through the Council and APA process by early fall, and presented to you for final decision by late fall. If you decide to enact a program for 2011, the process will afford us, and the commercial fishing community, adequate time to implement the program by January 1, rather than in the midst of the season. I will further amplify on this parallel-track process at the end of this memo.

Findings

The following findings, drawn from the public record and integrated with the Division's perspectives, constitute the basis for recommending continuation of the pilot program for 2010:

- The 2009 pilot program resulted in a significant reduction in discard mortality – in fact, with regard to summer flounder, the pilot program participants discarded some 98% less fish than non-participants.

- The 2009 pilot program was well managed and well monitored, with full transparency and solid accountability.
- With one minor exception (involving an oversight on the part of the Department during the initial application review process), the participants in the 2009 pilot program complied with all of the terms and conditions of the program, including keeping their summer flounder catches below their summer TAC and below their total allocation.
- The program's proven capacity to reduce regulatory discards will ultimately lead to increases to the State's quota. Thus, the State's entire commercial fishery stands to benefit by a continuation of the program.
- The program's proven capacity to provide accurate data facilitates a sound, scientifically based approach to the continuing analysis of sector allocation as a potential strategy for improving the management of our commercial summer flounder fishery. Thus, again, the State's entire commercial fishery stands to benefit by a continuation of the program.
- The participants in the program reported that the results of their participation were positive, involving enhanced economic efficiencies, an improved ability to make sound and safe business decisions, a cooperative and collaborative orientation among fellow fishers, and a heightened sense of well-being and job satisfaction.
- The economic analysis performed on the 2009 pilot program by the URI Department of Environmental and Natural Resource Economics (report dated 17 February 2010), while preliminary in nature, found that the sector program had a positive economic effect on non-sector vessels.
- Although some members of the RI commercial fishing community remain steadfastly opposed to the program, many others recognize its potential benefits and support its continuation, with the caveat that the program needs to be configured in a way that makes it broadly available. Of particular concern are the two restrictions that limited participation in the 2009 pilot program – the need for a federal permit and a state summer flounder exemption certificate – and the use of average landings from the 2004-2008 time period as the basis for allocation.
- Although the Division thought that there might be interest and support from the community for a percentage cap on the size of individual sectors (a 10% cap was proposed), there was no support for that provision.
- Although the Division thought that there might be interest and support from the community for providing prospective participants, particularly new participants, with an opportunity to use their most recent yearly landings to better position themselves for participation in a continued pilot program (an expanded 2004-2009 time period was proposed), there was no support for that provision.

2010 Program Proposal

I recommend adoption of a program, applicable to the remainder of the 2010 calendar year, that continues the 2009 program, with the following changes:

- The program will be open to any group of three or more vessels who wish to apply.
- The allocation for each sector will be based on landings histories for participating vessels for May 1 – December 31, averaged over the 5-year period 2004-2008, and then applied as a percentage to the portion of Rhode Island's 2010 commercial summer flounder quota that's been allocated to the summer and winter II fisheries. Any landings taken by

participating vessels between May 1, 2010 and the date the sector is approved will be deducted from the sector's allocation.

- The federal permit requirement is no longer applicable.
- The 200-pound daily limit possession shall be waived, during the 2010 calendar year, for any vessel whose owner does not have a summer flounder exemption certificate but has been authorized for participation in an approved sector allocation pilot program.
- Vessels participating in the program that have federal permits must be operated by individuals holding RI licenses or landing permits.
- Vessels participating in the program that do not have federal permits must be operated by individuals holding RI licenses or landing permits.
- Discards reported by the sector participants shall be applied, in the form of transferred poundage, back to the general category fishery.
- The summer TAC will remain in effect through September 15; however, the amount per vessel shall be increased to 10,800 pounds. The increased amount reflects the maximum amount of summer flounder that non-sector participants are potentially capable of harvesting this year, from May 1 through September 15, given the size of the summer sub-period quota and the governing regulatory provisions. (The summer TAC will also be reduced by any landings taken by participating vessels between May 1 and the date the sector is approved.)

Summary

The proposed continuation of a modified version of the summer flounder sector allocation pilot program seeks to build upon the success achieved during the program's first year. The repeal of the two provisions that limited participation during the program's first year will render the program available to a broader range of fishermen, particularly smaller, inshore fishermen. Ironically, the unintentional application of the program to those whose landings have historically occurred during the May-December time period will further enhance the suitability of the program for smaller, inshore fishermen. As such, the 2010 version of the program is likely to have a different character, and involve new participants, and thus be particularly useful for purposes of analyzing the pros and cons of the sector allocation approach for different components of the State's commercial summer flounder fishery.

Looking Ahead

As noted earlier, if you opt to move forward with the 2010 program as proposed, I feel that it is of critical importance to quickly re-engage the State's commercial community, through the Roundtable process, on a parallel track aimed at addressing the very basic question of how to manage the State's commercial summer flounder quota in a way that best addresses the State's interests, with a catch-share/sector-allocation approach as one option. With regard to that option, we should seek to configure a program that would have broad applicability for the entire fishery. A key aspect of that exercise will include the need to develop a fair and appropriate allocation formula. In essence, you already charged us to undertake this parallel-track review process in your decision memo, dated 25 January 2009, pertaining to the 2009 pilot program; and indeed, we have been conducting a host of public meetings where the issues have been discussed and considered. But it has become clear that any alternative approach to traditional quota management needs to be teed up for consideration and potential adoption well ahead of the start of the fishing season – i.e., before January 1. So, rather than

await the outcome of a revised, second-year pilot program, I am prepared to immediately re-engage the Roundtable process with a view to having a proposal for the 2011 season developed and ready for formal consideration by early fall.



Approval for filing as presented - Date:

9/5/10



W. Michael Sullivan, Director
Department of Environmental Management