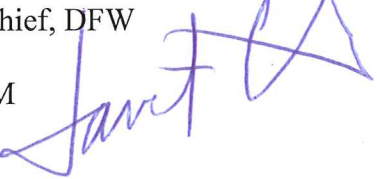




**RHODE ISLAND
DEPARTMENT OF ENVIRONMENTAL MANAGEMENT**
235 Promenade Street, Providence, RI 02908-5767
Rhode Island Relay 711

Final Decision Memo

TO: Robert Ballou, Acting Chief, DFW

FROM: Janet Coit, Director DEM 

DATE: April 14, 2011

SUBJECT: Final Decisions Pertaining to February 22, 2011 Marine Fisheries Public Hearing Items:
Recreational Summer Flounder Regulations
Recreational Scup Regulations
Recreational & Commercial Striped Bass Regulations
Recreational & Commercial Tautog Regulations
Recreational & Commercial Winter Flounder Regulations
Commercial & Recreational Menhaden Regulations

I have received and reviewed your April 4, 2011 briefing memo on the above-referenced items. I have also received and reviewed the supporting documentation submitted along with the memo, including: the minutes of the RI Marine Fisheries Council's Summer Flounder (1/26/11), Scup/Black Sea Bass (1/26/11); Striped Bass (1/18/11); Tautog (2/16/11); Winter Flounder (12/08/10); and Menhaden (11/30/10 & 1/06/11) Advisory Panel meetings, the public hearing summary document, a summary of public hearing comments, the minutes from the March 7, 2011 RIMFC meeting, and the February 28, 2011 memo from Mark Gibson to the Council, setting forth the Division's recommendations on the items.

I note that the above-referenced items were subjected to a thorough public review process, in accordance with the RI Administrative Procedures Act and via consultation with the RI Marine Fisheries Council (RIMFC). I find the public record, and the RIMFC's recommendations on the issues, to be quite valuable, offering a solid basis for my review and consideration. I also hold in high regard the Division's recommendations on the issues, and I particularly appreciate the Division's efforts to inform the public discussion and work toward consensus with the RIMFC and the fishing community wherever possible.

Having fully considered all of the recommendations and supporting documentation, I hereby set forth the following final regulatory decisions:

Recreational Summer Flounder Regulations for 2011:

To be enacted: a May 1-December 31 season, 7 fish/person daily limit, and 18.5” minimum size.

Consistency with RIMFC: The measures are consistent with the Council’s recommendation, with one exception. The Council recommended adopting a provision that would allow shore anglers to retain one fish, measuring at least 16.5”, as part of their 7-fish daily limit. I appreciate, and share, the Council’s interest in configuring our regulatory program in a way that will better enable shore anglers to catch a summer flounder large enough to keep. But Rhode Island is not in a position to enact a reduced minimum size provision for shore anglers this year.

I note that Connecticut has just enacted a new regulation that will allow shore anglers fishing from any of 42 designated public access fishing sites along the southern Connecticut shoreline to retain one fish measuring at least 17”. I understand that Connecticut was able to allow for a decreased minimum size provision for shore anglers because 1) Connecticut has a robust volunteer recreational angler survey program that generates catch and effort data sufficient to calculate the effects of the decreased minimum size provision vis-à-vis overall recreational fishing mortality, and 2) Connecticut’s regulations for the general category recreational summer flounder fishery are relatively conservative (18.5” minimum size, 3 fish/person daily limit, and May 15 – September 5 season).

The recreational catch and effort data that is used to assess RI’s summer flounder fishery currently does not have the resolution necessary to calculate the effects of a decreased minimum size provision for shore anglers. Assuming that the general category fishery regulations remain as proposed, it is possible that a reduced minimum size provision for shore anglers could trigger an increase in mortality high enough to push landings over Rhode Island’s target. While we could try to configure a revised regulatory program that compensated for the uncertainty associated with a reduced minimum size provision for the shore-based fishery, any such proposal could not be reviewed by the ASMFC in time for this upcoming season, risking noncompliance. More discussion is also needed on the enforceability of a shore-based provision. Connecticut appears to have worked through that issue by limiting the applicability of the provision to specific public fishing sites that lend themselves to monitoring and inspection. A similar approach might work in RI, but it would take time to develop it.

For the above-stated reasons, I cannot support the adoption of a reduced minimum size provision for shore anglers at this time. However, we should endeavor to make this happen for 2012. To get there, more recreational fishermen – particularly those fishing for summer flounder, and particularly those fishing from shore – need to participate in DEM’s newly established volunteer recreational angler logbook program, known as eRec. If enough anglers participate in that program, and if we are able to craft a program that is enforceable (perhaps drawing upon Connecticut’s approach of identifying specific

areas), we should be able to entertain, and ultimately enact, a shore angler provision for the fluke fishery for 2012.

Concluding Comment: Every effort should be made, via outreach to the recreational fishing community, to increase participation in DEM's eRec logbook program, such that sufficient data will exist to enable RI to consider adoption of a reduced minimum size provision for shore anglers by next year.

Recreational Scup Regulations for 2011:

No changes. The regulations in effect for 2010 will continue in 2011.

Consistency with RIMFC: Maintaining status quo is consistent with the Council's recommendation.

Additional Comment: DEM, working with our state ASMFC delegation, should pursue the changes necessary to enable RI to liberalize recreational scup regulations in 2012.

Recreational Striped Bass Regulations for 2011:

No changes. The regulations in effect for 2010 will continue in 2011.

Consistency with RIMFC: Maintaining status quo is consistent with the Council's recommendation.

Commercial Striped Bass Regulations for 2011 {Floating Fish Trap Sector}:

No changes. The regulations in effect for 2010 will continue in 2011.

Consistency with RIMFC: Maintaining status quo is consistent with the Council's recommendation.

Commercial Striped Bass Regulations for 2011 {General Category}:

To be enacted: (1) a revised allocation formula for the summer and fall sub-periods, with 80% of the annual quota for the general category allocated to the summer sub-period and 20% of the quota allocated to the fall sub-period; (2) a revised start date for the fall sub-period, from September 13 to September 4; and (3) a clarifying regulatory provision specifying that shore-based commercial fishermen are subject to a 5 fish/person/day possession limit.

Consistency with RIMFC: The measures are consistent with the Council's recommendation.

Recreational and Commercial Tautog Regulations for 2011:

To be enacted:

- (1) the continuation of a 4/15 – 5/31 open season @ 3 fish/person {status quo};
- (2) an extended spawning closure from June 1 through July 31 {effect = prohibition on recreational and commercial harvest during the month of July};
- (3) an open season for all recreational fishermen from 8/1 – 10/15 @ 3 fish/person {effect = increase in the possession limit for the party and charter boat sector from 1 to 3 fish/person};
- (4) an open season for all recreational fishermen from 10/16 – 12/15 @ 6 fish/person {effect = decrease in the possession limit for the party and charter boat sector from 10/16 – 11/30 from 8 to 6 fish/person; and an increase in the possession limit for the party and charter boat sector from 12/1 – 12/15 from 1 to 6 fish/person};
- (5) the continuation of a 10 fish/boat limit for every boat other than licensed party and charter boats {status quo};
- (6) the continuation of the mandatory logbook reporting protocol for all tautog fishing activities undertaken by the party and charter boat sector {status quo}; and
- (7) a revision of the summer sub-period for the commercial fishery to August 1 through September 15 {effect = two weeks added to compensate for two weeks lost due to July closure}.

Consistency with RIMFC: The measures are consistent with the Council's recommendation, with two exceptions. First, the Council recommended increasing the boat limit for the private boat sector from 10 to 12 fish. The basis for this recommendation appears to be a generalized interest in establishing a vessel limit that is exactly twice the individual possession limit in the fall. Second, the Council recommended increasing the possession limit for party and charter boats in the fall from 6 to 8 fish per person. The basis for this recommendation is the interest on the part of the party and charter boat fleet in maintaining a vibrant fall fishery, which is enhanced by high bag limits, as well as the relatively low fishing mortality caused by the party and charter boat sector, and the sector's excellent record of compliance with eRec reporting requirements

The RI/MA tautog stock complex remains below its biomass target and subject to overfishing. Additional reductions in fishing mortality are needed to allow the stock to rebuild. More than 90 percent of tautog caught in Rhode Island are taken by recreational fishers, the vast majority of recreational fish are taken in the fall, and the vast majority of those fish are taken by the private boat sector. For those reasons, I cannot support a liberalization of the regulations applicable to the private boat sector at this time. While I recognize that the party and charter boat sector takes far less fish than the private boat sector, and is contributing valuably to local tautog assessments via their participation in the eRec logbook program, I note that, last fall, the Department signaled its intent to reduce the possession limit for that sector to 6 fish/person in 2011. I further note that party and charter boat sector is already liberalized, relative to the private boat sector, by not being subject to the 10 fish/boat limit. And finally I note that the 6 fish/person limit does not disadvantage the RI party and charter boat fleet relative to neighboring states. For those reasons, and with due regard to the overall need to reduce fishing mortality on the local tautog stock, I

cannot support the continuation of an 8 fish/person possession limit for the party and charter boat sector at this time.

Recreational and Commercial Winter Flounder Regulations for 2011:

To be enacted: a prohibition on the possession of winter flounder in Point Judith Pond, including the Harbor of Refuge.

Consistency with RIMFC: The measure is consistent with the Council's recommendation.

Additional Comment: The Division should develop and implement a long-term strategic plan to restore winter flounder in RI waters, in accordance with the proposal offered at the public hearing.

Commercial and Recreational Menhaden Regulations for 2011:

To be enacted:

- (1) maintenance of the existing 2.0 million pound threshold (i.e., biomass "floor") and 50% cap (harvest "ceiling"), and all associated stock monitoring requirements {status quo};
- (2) a single 120,000 pound/vessel daily possession limit, once the threshold is reached {effect = replacement of provision that had established an initial daily possession limit of 80,000 pounds, followed by an increase to 120,000 pounds when 3.0 million pounds was determined to be present in the management area};
- (3) a new Providence River closure for commercial purse seine operations – established as the area north of a line from Rocky Point to Conimicut Light to Nayatt Point {effect = permanent closure of an area that had been seasonally closed, from August 1 – December 31, annually}
- (4) maintenance of the Greenwich Bay closure for commercial purse seine operations {status quo};
- (5) repeal of all other area closures {effect = opening of all areas previously closed to commercial purse seine operations, namely: Allen Harbor, Wickford Harbor, Warren River, Barrington River, Palmer River, Bristol Harbor, Kickemuit River, Upper Sakonnet River, Nannaquaket Pond, Dutch Harbor, Melville South, Newport Harbor, and Hope Island Management Area};
- (6) a new 200 fish/vessel daily possession limit for recreational fishermen fishing in the two areas closed to commercial purse seine operations – i.e., the Providence River and Greenwich Bay {effect = new restriction on recreational harvest in the two closed areas};
- (7) maintenance of all existing reporting requirements (with the technical clarification offered below) {status quo};

- (8) maintenance of all existing fish storage capacity certification requirements (with the technical clarification offered below) {status quo};
- (9) maintenance of all existing net restrictions, including size, marking and certification requirements {status quo};
- (10) maintenance of existing Saturday, Sunday, and holiday closures {status quo};
- (11) the following technical clarifications:
 - A provision stipulating that once a vessel is certified with regard to its fish storage capacity, it does not need to be recertified if it wishes to re-enter the fishery; and
 - A provision that calls upon vessels to report their daily landings to the Division of Fish & Wildlife, rather than the Division of Law Enforcement.

Consistency with RIMFC: The measures are consistent with the Council's recommendation, with one exception. The Council recommended establishing an 85-foot maximum vessel length for the purse seine fishery. The basis for this recommendation appears to be the Council's interest in maintaining a relatively small-scale commercial purse seine fishery in Narragansett Bay. I appreciate that interest. However, I find that the existing regulatory provision regarding vessel capacity – i.e., no vessel engaged in the commercial menhaden fishery may have a usable storage capacity greater than 120,000 pounds – adequately and appropriately addresses concerns regarding engagement in the fishery by large vessels. I therefore cannot support the adoption of an 85-foot maximum vessel length provision at this time.