



Rhode Island
Department of Environmental Management

DIVISION OF FISH AND WILDLIFE

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TO: Janet Coit, Director

FROM: Mark Gibson, Deputy Chief

DATE: December 20, 2013

SUBJECT: Request for Decisions on the November 19, 2013 Marine Fisheries Public Hearing Items

Proposed regulatory changes have moved through the regulatory review process and are hereby presented for final decision.

The items summarized and set forth herein were the subject of a public hearing held on November 19, 2013 and subsequent consideration by the RI Marine Fisheries Council (Council) at their December 2, 2013 meeting. Supporting documentation submitted along with this memorandum include: the public hearing summary document; the summary of public hearing comments; the December 2 Council meeting minutes; and the applicable advisory panel meeting minutes.

Having reviewed the entire record, and conferred with staff, I hereby urge adoption of the proposed changes, as set forth below. If you concur, please indicate by signing this memo at the end and returning it to me. Upon receipt of the signed memo, I will initiate the filing process. If you wish to make any changes that differ from those proposed, please delineate those changes via a separate memo.

1. Proposed Amendments to American Eel regulations (changes to Part VII)

The proposed amendments are intended to help to protect and rebuild the American eel population, which is depleted in U.S. waters. In August 2013, the ASMFC adopted an addendum to the Interstate Eel FMP aimed at reducing fishing mortality on eels, given their depleted status. States are required to implement the measures by January 2014. The measures proposed for adoption are as follows:

- Increase the minimum size (recreational and commercial) from 6" to 9".
- Enact a new commercial gear restriction – namely, a minimum mesh size requirement of ½" x ½" on all eel pots (with an allowance that just the escape panel can be ½" x ½" through 2016).

- Establish a closed season, from September-December annually, for commercial harvest from any gear type other than baited traps/pots or spears.
- Reduce the recreational possession limit from 50 eels/person/day to 25 eels/person/day, while allowing the captain and crew of licensed party/charter boats to possess 50 eels/person/day.

The possession limit for commercial license holders will remain unlimited.

There was no AP meeting held on this matter. There were several comments offered at public hearing, generally pertaining to the proposed seasonal closure. As noticed, the regulations would ban the commercial possession of eels during the closed season, and that raised concern among commercial fishermen who use eels as bait for striped bass. Others noted that the best time to commercially harvest eels was in the fall (and spring); thus the closure would adversely impact the commercial fishery.

At the RIMFC meeting, the Council echoed many of the same concerns expressed at hearing. The Council also noted that the regulations as noticed would allow a 50 eel/person/day exemption for anglers aboard party/charter boats versus just the captain and crew, with the latter being the appropriate exemption per the ASMFC plan. At the RIMFC meeting, the Division recommended adoption of the proposed amendments, with the understanding that the final regulations would be modified to reflect the issues and concerns raised at hearing and by the Council. The Council concurred and recommended adoption, as modified.

*Consistent with the Council's recommendation, the Division recommends adoption of the proposed regulations pertaining to American eels, with the caveats that 1) the final regulation pertaining to the closed season will be amended to clarify that the closed season only pertains to the **harvest** of (silver) eels from weirs, fyke nets, etc., and does not pertain to the possession of eels during that time (nor to the harvest of (yellow) eels from baited traps/pots, which is the primary, if not exclusive means for harvesting eels in RI); and 2) the final regulation pertaining to the for-hire sector will be amended to clarify that the 50 eel allowance on party/charter boats only pertains to the captain and crew, not the anglers on board. With those modifications, the proposed changes will achieve full compliance with the ASMFC's FMP for American Eel and be consistent with public and Council comments/recommendations.*

2. Proposed amendment to Atlantic herring regulation (change to Part XI)

The proposed amendment would repeal the October 1 – October 21 closed season for Atlantic herring in RI. The provision, enacted many years ago, is now obsolete. It has not been enforced for quite some time. Atlantic herring are now managed under a quota system, and areas are opened and closed, by the federal government, pursuant to that system. There is no need or basis for an October closure in RI.

There was no AP meeting held on this matter. There were no comments offered at the public hearing. At the RIMFC meeting, the Division recommended adoption of the proposed amendment. The Council concurred and recommended adoption as proposed.

Consistent with the Council's recommendation, the Division recommends adoption of the proposed amendment.

3. Proposed amendments to commercial Summer Flounder regulations (changes to Part VII)

A. Sub-Periods and Possession Limits

The proposed amendments would modify the possession limits during the winter I and winter II sub-periods, modify the dates of the summer and winter II sub-periods (shortening summer and lengthening winter II), and either maintain the same (pro-rated) summer sub-period allocation, or increase it (same percentage but applied during shorter period). Three options were developed, and considered by the Summer Flounder AP; no consensus was reached on any of the options. At the public hearing, 12 comments were offered, all but one supporting status quo. The RI Commercial Rod and Reel Association favored status quo. The RI Fishermen's Alliance supported a suite of changes including elimination of the sub-periods and establishment of uniform possession limits throughout the year, with an aggregate program during the winter/spring. At the RIMFC meeting, the Division noted its support for the proposed modifications to the possession limits during the winter I and winter II sub-periods. Regarding the summer sub-period, the Division recommended aligning the summer sub-period end date with the movement of fluke out of RI state waters, which typically occurs by mid-September, but took no position regarding changes to the sub-period allocations. The Council engaged in a substantive discussion, focused on the pros and cons of shifting the summer sub-period end date and the appropriate summer sub-period allocation. On a 4-3 vote, the Council recommended adoption of option 2, which includes the following provisions:

- Modifying the summer sub-period from 5/1 – 10/31 with 35% of the quota, to 5/1 – 9/15 with 35% of the quota;
- For the winter sub-period: decreasing the starting possession limits from 300 pounds/day to 200 pounds/day; and decreasing the starting weekly possession limit for the aggregate program from 2,500 pounds/week to 2,000 pounds/week, decreasing to 100 pounds/day (from the current 300 pounds/day) when the aggregate program closes.
- For the (new) fall (winter II) sub-period: decreasing the starting possession limit from 700 pounds/day to 200 pounds/day.

Consistent with the Council's recommendation, the Division recommends adoption of the proposed amendments, as set forth above. The changes to the possession limits for the winter I and winter II sub-periods were well supported by the AP, at hearing, and by the Council. The changes to the summer sub-period will have the effect of shifting fish from winter II (which will now begin on September 16) to the summer. That makes sense, given the higher effort levels in the summer and the challenges faced by the Division in managing the summer sub-period quota. In 2013, the sub-period opened at 100 pounds on May 1, dropped to 50 pounds/day on June 23, then closed on October 10. The new summer sub-period will better enable the Division to keep the fishery open throughout the summer at 100 pounds/day. The change will have a negative

impact on the winter II period, but in view of continuing decreases in the overall summer flounder quota, the fishery will continue to be impacted, one way or another.

B. Exemption Certificate Program

The proposed amendments would activate latent fluke exemption certificates by making them available via a lottery process. The Summer Flounder AP was generally opposed to the proposal. At the public hearing, 14 comments were offered, most supporting status quo. The RI Commercial Rod and Reel Association favored status quo. The RI Fishermen's Alliance opposed the proposal, supporting the complete elimination of the program instead. At the RIMFC meeting, the Division noted that the program is difficult to administer, and acknowledged that if the proposed changes were adopted, it would be further challenging to determine which permits would be considered latent. After a brief discussion, the Council voted unanimously to recommend against adoption of the proposal, and to maintain the fluke exemption program in its current form.

Consistent with the Council's recommendation, the Division recommends not adopting any changes to the fluke exemption certificate program, and remaining at status quo. The Division is working on reconstituting the certificate records and is not prepared, at this time, to undertake the review and activation of latent certificates.

4. Proposed amendments to commercial Scup regulations (changes to Part VII)

The proposed amendment, recommended by the Scup/Black Sea Bass AP, would combine the spring and summer sub-periods; leaving the fall sub-period intact. Two-thirds of the RI quota would be allocated to the combined spring and summer period; one-third would remain allocated to the fall sub-period.

The current management program – dividing the state quota period (May-Oct) into three sub-periods with 1/3 of the state's quota allocated to each sub-period – compels the Division to adjust possession limits within each sub-period to both ensure that the sub-period quota is fully harvested and that there is no overage. The starting possession limit for each sub-period is 10,000 pounds/week. In 2013, the Division:

- 1) opened on May 1 at 10,000 pounds, decreased to 5,000 pounds on May 26, and rode out the first sub-period (May-June) at that level;
- 2) returned to 10,000 pounds at the opening of the second sub-period (July-late September) and rode out the sub-period at that level, ending with an underage, which was rolled into the third sub-period; and
- 3) opened at 10,000 pounds for the third sub-period (late Sept-October), increased to 15,000 pounds on Sept. 29, increased again to 20,000 pounds on Oct. 13, increased again to 25,000 pounds on Oct. 24, and ended the state-quota period, on October 31, with a surplus (which was addressed by increasing the starting possession limit for the winter federal quota period from 2,000 pounds/day to 8,000 pounds/day).

In addition to the above adjustments, the Division enacted several rollovers, from the floating fish trap sector to the general category during the season to help ensure that RI's full commercial

allocation was harvested. (60% of the state quota is allocated to the floating fish trap sector; the other 40% is allocated to the general category.) Also, RI donated a portion of its state allocation (150,000 pounds) to NY in the fall, when it became apparent that RI was not going to fully utilize its quota (despite the possession limit increases).

Given the high catch rates that occurred at the beginning of the 2013 season, and the associated need to decrease the possession limit to prevent an overage, the Scup/Black Sea Bass AP recommended combining the spring (May-June) and summer (July-late September) sub-periods with a view to keeping the possession limit at or near 10,000 pounds/week throughout the spring and summer. No comments were received at the public hearing. At the RIMFC meeting, the Division noted that the proposal would likely improve the Division's ability to manage the quota. The Council concurred and voted unanimously to recommend adoption of the proposal.

Consistent with the Council's recommendation, the Division recommends adoption of the proposed amendment. The Division would only note that maintaining the possession limit at or near 10,000 pounds during the entire May-late September period depends on the amount of quota allocated to RI (which will be lower in 2014), the availability of fish, and catch rates. The Division will continue to monitor the performance of the fish traps next year, and if the traps continue to under-harvest relative to their allocation, the Division will likely recommend an adjustment to their allocation. While roll-overs achieve the same purpose, it makes little sense to rely on that mechanism if, for whatever reason, the fish traps continue to under-harvest relative to their allocation.

5. Proposed amendments to commercial Black Sea Bass regulations (changes to Part VII)

The proposed amendments would:

- Reduce the daily possession limit during the May-June sub-period from 50 to 25 pounds;
- Split the July-October sub-period into two additional sub-periods (July and September-October, with an August closure), split the 39% July-October sub-period allocation into a 19.5% allocation for the new July sub-period and a 19.5% allocation for the new September-October sub-period, and reduce the daily possession limit for the two new sub-periods from 50 to 25 pounds; and
- Reduce the daily possession limit during the November-December sub-period from 250 to 100 pounds.

The current management program – dividing the state quota period into four sub-periods with 25% of the state's quota allocated to the January-April sub-period, 25% allocated to the May-June sub-period, 39% allocated to the July-October sub-period, and 11% allocated to the November-December sub-period – compels the Division to close the fishery before the end of each sub-period due to the very small quota. The closures occur despite the low possession limits. In 2013, the longest closure occurred during the July-October period, when the fishery was open for the month of July (plus four days in September).

The Scup/Black Sea Bass AP supported for the proposed amendments. At the public hearing, opinions were mixed among the 13 comments that were offered. At the RIMFC meeting, the Division supported the proposed reduction in the possession limit during the November-

December sub-period, but expressed no preference regarding the proposed changes to the summer/fall sub-period, noting that the state's quota was too small to keep the fishery open year-round, regardless of how the sub-period and possession limits are configured. The Council, on a 5-2 vote, recommended adoption of a modified version of the proposed amendment – namely, splitting the July-October sub-period as proposed, but maintaining the 50 pound possession limit for all three sub-periods running between May and October.

Consistent with the Council's recommendation, the Division recommends adoption of the proposed amendments, as modified by the Council. There are upsides and downsides to status quo, and upsides and downsides to the proposed changes. The fishery is exceedingly difficult to manage due to the low quota, and will likely remain that way, at least for the near future. The Division will continue to advocate strongly, at the regional and federal levels, for improved science and modeling, which are needed in order to achieve larger quotas.

6. Proposed amendments to Coastal Shark regulations (changes to Part VII)

The proposed amendments would enact various technical changes to the regulatory provisions governing smooth dogfish (smoothhound sharks). The changes need to be enacted in order to maintain state compliance with the ASMFC's FMP for Coastal Sharks. The changes have no significant impact on RI's fisheries, but need to be enacted to maintain compliance with the Plan.

There was no AP meeting held on this matter. There were no comments offered at the public hearing. At the RIMFC meeting, the Division recommended adoption of the proposed amendments. The Council concurred and recommended adoption as proposed.

Consistent with the Council's recommendation, the Division recommends adoption of the proposed amendments.

7. Proposed amendments to Lobster regulations (changes to Part XV and Licensing Regulations)

The proposed amendments would enact lobster trap reductions and lobster trap transferability, consistent with the requirements set forth by the ASMFC's FMP for American Lobster.

A Lobster AP meeting was held, but attendance was poor and no meaningful recommendations emerged. At the public hearing, six comments were offered; some were strongly opposed to the proposal, others urged that the Lobster AP be reconvened to review and revise the proposal to better address the needs and interests of the RI lobster industry. At the RIMFC meeting, the Division recommended tabling the matter to allow the Lobster AP to reconvene and attempt to reach consensus on the proposal. The Council concurred and unanimously recommended tabling the matter.

Consistent with the Council's recommendation, the Division recommends not moving forward with these proposed amendments at this time. The Division will staff and participate in the Lobster AP meeting, scheduled for December 18th, then, based on the outcome of the meeting,

revise and re-notice the proposed amendments, conduct a public hearing in mid January, and bring the matter back before the Council in early February.



Approved for filing as presented

Janet Coit

Janet L. Coit, Director

12/20/13

Date