



Rhode Island
Department of Environmental Management

DIVISION OF FISH AND WILDLIFE

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TO: Frederick Vincent, Acting Director DEM

FROM: Mark Gibson, Deputy Chief for Marine Fisheries DFW

DATE: March 23, 2005

SUBJECT: Request for Decision on March 14, 2005 Marine Fisheries Hearing Item

Comments and recommendations on the proposals presented at the March 14, 2005 DEM public hearing are summarized in this memorandum. The RIMFC considered these issues at their March 16th meeting and have provided advice in accordance with RIGL 20-2.1-10. Supporting documentation submitted along with this memorandum include the public hearing summary document, excerpts from the March 16th RIMFC meeting minutes, summary of public hearing comments, pertinent advisory panel minutes, and copies of all submitted written comments. The regulation filing process will be initiated upon receipt of your determinations regarding these proposals.

- 1) Changes to the commercial scup mesh requirements. These are changes required by the Atlantic States Marine Fisheries Commission (ASMFC) and consist of a mesh size increase to 5" when 200 pounds or more of scup are being landed during the time period of May 1 – October 31. There were no public comments made at the hearing. A written comment came forward opposing the change. The Council unanimously agreed to the change with the caveat of adding language stating that the minimum mesh size is required for either diamond or square mesh. The language as presented only addressed diamond mesh. The Division recommends adoption of the perfected Council language. It is a compliance issue with the ASMFC.
- 2) Atlantic herring fishery closure in area 1a (Gulf of Maine). This fishery has reopened therefore the issue was retracted from the public hearing docket. No action is required.
- 3) Black sea bass commercial allocation changes for the summer 2 (Aug-Oct) and winter 2 (Nov-Dec) management sub periods. These allocation changes were proposed by DFW because of high landings during the 2004 summer 2 sub-period. More quota is needed during this period to keep the fishery open. The

black sea bass advisory panel recommended staying at status quo when they met in 2004. There were no public comments made at the hearing. One written comment supported the change. The Council declined to take action on this item. The Division recommends adopting the allocation change as proposed so as to reduce the likelihood of fishery closure. We have the authority to modify possession limits within sub-periods in the event of unforeseen consequences.

- 4) Commercial and recreational tautog fishery management measure changes. A bag limit decrease was proposed by DFW for the fall sub period in order to maintain fishing mortality and stock biomass at appropriate levels. The stock is currently at the fishing mortality target and has not approached the over fishing definition. The advisory panel made the original proposal of dropping to 8 fish from the 10 fish fall bag limit and this came forward as the advisory panel preferred option. There were three comments given at the public hearing in opposition to the proposal stating that they felt the wave 6 MRFSS data were erroneous. One written comment also stated opposition to lowering the bag limit. There was one public comment suggesting a spawning closure during the spring sub period as an alternative. The Council voted 3 to 2 to remain at status quo. An earlier motion to approve the 8 fish bag limit failed 2 to 3. In view of public comments, the Division recommends remaining at the 10 fish fall bag limit for 2005. Tautog stock status can be safely reviewed next year to see if catch reductions or season closures are warranted.
- 5) Commercial striped bass fishery management measure changes. This proposal is to better manage the striped bass commercial fishery by changing the floating fish trap quota roll over date currently in regulation to an earlier date. The specific proposal came from the striped bass advisory panel as an advisory panel consensus. There was one written comment on regulation language not concerning the proposal. There were no comments made during the hearing. The Council voted unanimously to approve the advisory panel proposal. The Division recommends adoption of the advisory panel and Council recommendation. The change should allow for more efficient and safe utilization of the striped bass quota.
- 6) Changes to the salt water shad and herring regulations. There are currently no regulations governing river herring in the marine waters of the state. A daily possession limit is being proposed due to the poor status of the fishery. The shad fishery in marine waters is being closed due to an ASMFC requirement. There was no public comment on the shad proposal. The Council voted unanimously to approve the shad proposal. The Division recommends adoption of the shad fishery closure. It is an ASMFC compliance requirement.

- 7) There were four public comments opposed to implementing a possession limit for river herring in marine waters. In three of these four cases the individuals recommended a spawning closure until May 1st instead. One written comment supported restricting herring catches but also suggested a seasonal closure as an alternative. D. Preble, a RIMFC member, suggested rewording the “collecting device” portion of the language as it was currently ambiguous. Chief Hall of DEM Law Enforcement suggested removing the collecting device language all together, stating that the regulation was still useful without that language in it. The Council voted 4 to 1 to approve a motion to send the herring regulation back to the DFW for reworking and possible reconsideration in 2006. The Division recommends adoption marine regulations for river herring consistent with freshwater regulations and in accordance with the enforcement perfection. The status of Rhode Island herring runs has deteriorated to a point where inaction in 2005 is unacceptable.

- 8) Proposal for a spawner sanctuary in Ninigret Pond. This is being proposed by the North Cape Shellfish Restoration Project to allow seeded shellfish from the project to grow undisturbed. The shellfish advisory panel supported the spawner sanctuary. There was no public comment on this item. The Council unanimously voted to approve the spawner sanctuary. The Division recommends approval of the spawner sanctuary.

- 9) Scup recreational fishery changes. These are changes needed in the scup recreational fishery to comply with ASMFC mandates with regard to season and bag limit for the four state, MA-RI-CT-NY region. There were two options presented at the public hearing. The first was a scup advisory consensus option which conformed to the ASMFC required season length and bag limits but split MRFSS sampling waves, possibly out of compliance with the ASMFC regional plan. The second option was developed by the Division and was an attempt to get as close to the advisory panel option as possible while not splitting waves. There were six public comments made during the public hearing all in support of the advisory panel option and opposed to the ASMFC/DFW option. The consensus was that the ASMFC/DFW option did not conform to the fishery in RI and would lead to large reductions in RI scup catch with adverse impacts to RI businesses and fishermen. The Council unanimously voted to approve the advisory panel option with the caveat that if the other states in the regional program were not complying to the plan, that RI will reevaluate it’s position prior to the end of the recreational season. The Division recommends that the Director authorize both options and provide DFW with the discretion to file either. The DFW Deputy Chief for marine fisheries is in negotiation with officials from MA, CT, and NY. If the other three states in the region conform to the ASMFC plan, Rhode Island

will as well. If any of the other states deviate from the regional standard, Rhode Island can go forward with the panel and council alternative.

- 10) Black sea bass recreational fishery regulation changes. These are changes being made to the black sea bass recreational fishery which eliminates the closed period which was in place during 2004. There were no public comments on this item. One written comment was in support of this option. The Council voted unanimously to approve the change. The Division recommends adopting the new black sea bass season.

- 11) SAFIS requirement regulations for dealers. This item was retracted from the public hearing docket and will be reintroduced at a later date. No action is required.

- 12) Winter flounder recreational and commercial regulation changes. These are changes to the required commercial mesh size and recreational seasons for the winter flounder fishery as required by ASMFC. They are an attempt to mirror the language from Amendment 13 to the federal ground fish fishery management plan. There were two public comments generally supporting the recreational changes but stating that they would like the spring period to open 1 week later. G. Allen stated that through a phone poll of the winter flounder advisory panel (there was no official meeting); the panel members supported the changes as written which was to start the third Saturday in April and run 30 days. Two public comments were given regarding the fyke net exemption and they supported leaving the fyke net exemption in the language. If fyke nets and floating fish traps were included this would create a gilling problem. The Council unanimously approved the winter flounder recreational changes including the shift to a fourth Saturday in April start date. The Council also unanimously approved the commercial winter flounder changes with the caveat that the Division would mirror and adapt state regulations to the federal amendment 13 language. They also unanimously voted to leave in the fyke net and floating fish trap exemptions in the language. The Division recommends adopting the winter flounder commercial and recreational regulations as required by ASMFC and as perfected by the RIMFC.

- 13) Possible change to the July 1, 2005 area 2 1/32" lobster gauge increase. This is was sent to public hearing considering the possibility that the ASMFC lobster stock assessment may indicate that this gauge increase is not necessary and to also recognize that the lobster industry is currently working with the ASMFC to develop an area 2 effort control plan which may substitute for further gauge increases. There were four public comments made at the hearing, including a

representative from the RI Lobstermen's Association, all in support of removing the scheduled gauge increase. The Council voted unanimously to approve removing the scheduled gauge increase. The Division supports the initiative but recommends holding the measure in abeyance pending the outcome of the ASMFC stock assessment and effort control plan for area 2. We have time to act on the regulation up to early June of 2005.

Cc Mike Lapisky- RIDFW
Najih Lazar- RIDFW
Jason McNamee- RIDFW
John O'Brien- RIDFW

Memorandum

To: Mark Gibson
Deputy Chief for Marine Fisheries, DFW

From: Bob Ballou
Chief-of-Staff

Date: April 25, 2005

Re: Marine Fisheries Regulations –
Matters Considered at March 14, 2005 Public Hearing

On behalf of Acting Director Terrence Gray, I am writing in response to your March 23, 2005 memorandum to (then) Acting Director Frederick Vincent, in which you set forth your recommendations regarding the following thirteen regulatory proposals:

- (1) Changes to mesh requirements in the commercial scup fishery;
- (2) Closure of the Atlantic herring fishery in Area 1A;
- (3) Changes to the seasonal sub-period quota allocations in the commercial black sea bass fishery;
- (4) Management measure changes in the commercial and recreational tautog fisheries;
- (5) Management measure changes in the commercial striped bass fishery;
- (6) Regulations for shad in marine waters;
- (7) Regulations for river herring in marine waters;
- (8) Spawner sanctuary in Ninigret Pond;
- (9) Management measure changes in the recreational scup fishery;
- (10) Management measure changes in the recreational black sea bass fishery;
- (11) Dealer regulations relating to the SAFIS requirement;
- (12) Management measure changes in the commercial and recreational winter flounder fisheries; and
- (13) Rescission of the July 1, 2005 minimum gauge size increase in the lobster fishery.

I have also reviewed the other documentation forwarded with your memo – the full record of the March 14, 2005 public hearing, the minutes of the March 16, 2005 meeting of the Marine Fisheries Council, and the minutes of the tautog (1/18/05), striped bass (undated), and scup/black sea bass (8/25/04 and 2/4/05) advisory panel meetings. I also reviewed the additional, supplementary materials you provided regarding the recreational scup management issue.

(2) Atlantic herring; (11) Dealer regulations

First, I note that items (2) and (11) do not require any action at this time.

(1) Commercial scup; (4) Tautog; (5) Commercial striped bass; (6) Shad; (8) Spawner sanctuary; (10) Recreational black sea bass; (12) Winter flounder

Second, for items (1), (4), (5), (6), (8), (10), and (12), I note that your recommendations are consistent with those of the Council, that there was broad support and little if any concern or opposition raised by members of the public at the hearing, and that the measures all appear to be sound and appropriate. ***As such, I hereby adopt your recommendations for those seven regulatory actions.***

(3) Commercial black sea bass

With regard to item (3) – the proposal to reallocate the commercial black sea bass quotas for the summer 2 period (increasing it from 25% to 39%) and winter 2 period (decreasing it from 25% to 11%) -- I note that the Division proposed the shift in order to keep the fishery open during the two periods. I also note that there was only one comment offered at the hearing, which was supportive of the Division's proposal. I further note that at its August 2004 meeting, the Scup/Black Sea Bass Advisory Panel recommended reducing the starting possession limit for the summer 2 period from 100 to 50 pounds, with no change in quota allocation for the period. Finally, I note that the Council, without any explanation on the record, declined to offer any recommendation on this item. ***Without any Council recommendation or discussion on the issue, I defer to the judgement of the Division, and hereby adopt your recommendation to shift the quota allocations as proposed in the public notice.*** I understand that you have the authority to modify possession limits within the sub-periods, and I encourage you to do so if it will further help to keep the fishery open.

(7) River herring

With regard to item (7) – the proposal to regulate the harvest and possession of river herring in marine waters via a daily possession limit – I am struck by two things. One is the significant decline in stock abundance over the past six years as reflected by assessments at Gilbert Stuart and Nonquit Ponds. The other is that the fishery apparently takes place primarily in freshwater areas, with the marine component largely involving the temporary storage of live fish that are harvested from freshwater sites. The record does not provide strong justification for a marine regulatory program as a means for addressing the deteriorating herring runs. In fact, the Council recommended not to move forward with any new regulation this year, suggesting instead to work on the issue during 2005 and come back with recommended changes for 2006. Those commenting at the hearing supported the Council's recommendation. While I appreciate the Division's concern for the river herring resource, which underlies your recommendation to adopt new regulations for the fishery, I believe that more work is needed to craft the most effective and appropriate regulatory strategy, particularly with regard to controls at the point of harvest. ***Therefore, I urge no action on the proposal at this time.***

(9) Recreational scup

With regard to item (9) – the proposed season and bag limit changes for the recreational scup fishery – I note that regulatory modifications are necessary in order to comply with Atlantic States Marine Fisheries Commission (ASMFC) mandates. I further note that there were two options presented at the public hearing: a proposal developed by the Scup/Black Sea Bass Advisory Panel, and a Division proposal. The two options are essentially identical with regard to bag limits, but differ with regard to seasons. The AP option provides for a 118-day season (May 26-Sept 20) for the Shore/Private sector, with a 25-fish bag limit. For the Party/Charter sector, the AP option provides for a 122-day season with the following differential bag limits: Aug 1-31 (25 fish), Sept 1-Oct 31 (60 fish), and Nov 1-30 (25 fish). The (corrected version of the) Division's proposal provides for a 123-day season for the Shore/Private sector, running from July

1 to Oct 31, with a 25-fish bag limit. For the Party/Charter sector, the Division proposes a 123-day season with the following differential bag limits: July 1 – Aug 31 (25 fish) and Sept 1 – Oct 31 (60 fish).

I note that the Council voted to support the AP option because it better conformed to the RI fishery and was less detrimental to RI fishermen and businesses. I further note that all six comments at the public hearing were supportive of the AP option. Your memo makes it clear that the Division is concerned about the splitting of the Marine Recreational Fisheries Statistics Survey (MRFSS) sampling waves, and about the issue of consistency with the other states in the region affected by the ASMFC mandate for scup (MA, CT and NY).

First, for the record, I want to note that this office has had several discussions with you on this particular issue over the past week. Pursuant to those discussions, you have provided us with additional information and insight, all of which is reflected in the review and analysis set forth below.

As you know, based on our initial review of the initial record you provided, we were initially inclined to embrace the Council's recommendation. That position was based on three factors. First, we value the advice of the Council, particularly when it is consistent with all public comments offered at hearing. Indeed, we always seek to follow Council recommendations, unless there are compelling reasons that urge otherwise. I know you share this perspective. Second, the Council's recommendation seemed very reasonable. Intuitively, it makes more sense to have a 4-month season that brackets the Memorial Day and Labor Day weekends, rather than one that begins after Memorial Day or concludes before Labor Day. Third, the sampling wave issue seemed like it might be addressable by altering the sampling wave protocols.

After reading the entire transcript of the February 7, 2004 meeting of the ASMFC Summer Flounder, Scup, and Black Sea Bass Management Board, which you Chair and which also includes Mr. Petronio, it became abundantly clear that the season/sampling wave issue was a major focus of the Board's deliberations. A number of Board members pressed for seasons that would involve split sample waves, as well as seasons that would be longer than four months. Yet because of the need to stay within the 2005 quota allocation and maintain the integrity of the catch data, the Board decided to establish a 4-month season and not allow any splitting of waves.

As part of our consideration of the issue, we asked you to investigate our contract with the firm that conducts the MRFSS sampling in RI to determine whether adjustments could be made to the sampling protocols for this year to obtain unconventional "wave" estimates. Thanks to your prompt response, we learned that such adjustments were potentially doable, although costly and perhaps too difficult to implement in time for the 2005 season.

The last piece of additional information you provided was an EXCEL file that summarized the RI recreational survey results since 2000 and the RI research trawl survey results since 1990. This information was particularly helpful in identifying the periods when scup are both present in RI waters, and harvested by RI recreational fishermen.

Based on our thorough review of the entire record, including the supplementary information and clarification you provided, this office finds as follows:

1. At the December 2004 meeting of the ASMFC Summer Flounder, Scup, and Black Sea Bass Management Board, it was agreed that the four states which collectively receive and share 97 percent of the coastwide recreational scup allocation – MA, RI,

CT, and NY – would adopt a regional approach involving a uniform set of management measures. This is a commendable move, which should lead to a more rational and effective management framework.

2. At the February 2005 meeting of the Board, it was agreed to establish common bag limits and a minimum fish size of 10.5 inches. After extensive discussion, it was also agreed to establish 4-month seasons, corresponding to two two-month sampling waves, with no wave splitting. The four states were afforded the opportunity to consider more conservative minimum sizes in order to extend the season. This office recognizes that effective management of the scup fishery, which should lead to significant increases in allocations in future years, requires good catch data. For the recreational sector, this data is derived solely from the MRFSS, which is conducted annually via six two-month sampling waves. Breaking up those waves, particularly by individual states acting inconsistently with other states in the region, would likely lead to data problems. There may be opportunities to explore different sampling protocols associated with modified seasons (or “unconventional waves”) in the future, and we would urge you to pursue those opportunities; however, we recognize the importance of moving forward on this regional issue in coordination with our regional partners.
3. On April 12, 2005, you met with your colleagues from MA, CT, and NY to discuss each state’s final regulations. You conveyed the Council’s position, adopted at its March 16 meeting, regarding the proposed scup season, but found that there was no wiggle room given the management framework established by the Board, and the commitment of your colleagues to abide by that framework. The group examined the possibility of extending the season, i.e., adding a third wave, by increasing the minimum fish size; but the group found that a modest increase would not provide enough of a conservation benefit to allow for a longer season.
4. Since the April 12 meeting, the states of CT and NY have enacted regulations establishing a four-month season beginning July 1 and running through Oct 31, i.e. corresponding to waves 4 and 5. MA is currently considering a four-month season beginning May 1 and running through Aug 31 (waves 3 and 4).
5. Your recommendation for RI – a four-month season from July 1 through Oct 31 – corresponds to the periods of highest recreational scup harvests in RI since 2000. It is therefore the best fit for the RI fishery. It is also synchronous with two of the other three states in the region. ***Therefore, I hereby adopt your recommendation for the recreational scup fishery, which establishes a 10.5-inch minimum size, and a four-month season for both the shore/private and party/charter sectors, running from July 1 through Oct 31. For the private/shore sector, there will be a 25-fish bag limit. For the party/charter sectors, there will be a 25-fish bag limit for the first two months (July-Aug) and a 60-fish bag limit for Sept and Oct.***

As a corollary to this decision, this office strongly urges you to explore options for extending the 2006 recreational season beyond the four-month minimum established for 2005. In this regard, you should continue to work closely with the Council, the Advisory Panel, industry representatives from the commercial and recreational sectors in RI, your colleagues from MA, CT, and NY, and the ASMFC Board. This fishery is perhaps the most popular and most readily accessible for the average citizen, including young and novice fishers, as well as low-income and ethnic groups. Increasing the overall regional/coastwide allocation, shifting more fish into the

recreational sector, and/or reducing bag limits or increasing minimum fish size should all be considered as potential options for increasing the length of the season.

(13) Lobster Gauge

With regard to item (13) – the proposal to rescind the 1/32” lobster gauge increase, currently scheduled to take effect on July 1, 2005 – I note that the rescission is strongly supported by industry and the Council. I also understand that Massachusetts is not planning to increase its minimum gauge size beyond the current 3 3/8” level. I am aware that the basis for the proposal stems from the conservation benefits to be derived from the new Area 2 effort control plan, which will soon be presented to the ASAMFC Lobster Management Board. I recognize that you support the proposal, but feel that it should be held in abeyance pending further developments associated with the effort control plan. I share that position, but I want to emphasize that we appear to be solidly on course with the plan, which we intend to present to the ASMFC as a sound, viable strategy, obviating the need for the gauge size increase. As such, I would hope and expect that we will be able to file the amended regulation to rescind the gauge size increase as soon as possible, but no later than June 1, 2005.

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As always, I appreciate the tremendous amount of time and effort you and your staff have put into this detailed set of regulations, including the very thorough and open process that you employed to garner the input and advice of the Council, the industry, and the general public.