



Rhode Island
Department of Environmental Management

DIVISION OF FISH AND WILDLIFE

3 Fort Wetherill Rd
Jamestown, RI 02835

401 423-1920
FAX 401 423-1925
TDD 401 831-5508

TO: W. Michael Sullivan, Director, DEM

FROM: Robert Ballou, Acting Chief, DFW

DATE: April 5, 2010

SUBJECT: Request for Decision on February 23, 2010 Marine Fisheries Public Hearing Items

Proposed regulatory changes pertaining to the 2010 marine fisheries season have moved through the regulatory review process and are hereby presented for final decision.

The following items were 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 striped bass, scup/black sea bass, summer flounder, and tautog advisory panel meetings, 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.

The proposed changes are summarized below, and detailed in the attached annotated regulatory document.

Having reviewed the entire record, and conferred with staff, I hereby urge adoption of all of the proposed changes. If you concur, please indicate by affirming each section of 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.

Proposal to continue/expand/modify the summer founder sector allocation program in 2010: This portion of the public hearing record will be transmitted in a separate correspondence.

Proposed changes to the Menhaden Management Plan: This portion of the public hearing record will be transmitted via separate correspondence.

Proposed changes to the Recreational Summer Flounder Management Plan: Six (6) proposals for 2010 recreational summer flounder quota management were brought forward for public comment. The first proposal was to remain at status quo. Four of the other five proposals had seasons from May 1 – December 31 but had different size limits as follows: Option 2 - 19 inches, Option 3 - 19.5 inches,

Option 4 - 20 inches, Option 5 - 20.5 inches, and the last Option 6, 19 inches/6 fish bag limit/May 1 through July 31 and August 15 through December 31, which was presented, by DEM, as a necessary alternative if 19" were chosen as the minimum size. All six options met the guidelines of the ASMFC; however ASMFC cautioned that with Option #2 (19 inch fish) there may be a danger of exceeding the targets.

There were several public comments made, (11) of which supported option #3 - (19.5 inch fish). There were approximately (5) comments made in support of option #4 - (20 inch fish). There was one comment in support of option #6 - (19.5 inch fish with a two week closure in August). There were several comments made strongly opposing option #6. There was one written comment received from D. Sisson in favor of an option that would allow for 19.5 inches/ 4-5 fish bag limit, and a season that would offer the chance to fish at least the last three weeks of May, and all of June and July. He felt the month of August was most expendable. At the public hearing this individual was in favor of option #3 (19.5 inch fish)

The Council unanimously recommended adoption of option 3 for the 2010 recreational summer flounder management plan -- 19.5 inch minimum size, May 1-December 31 season, and 6-fish bag limit. I urge adoption of the Council's recommendation (option 3). The option is conservative and should sufficiently guard against over harvesting in 2010. I further note that the ASMFC is moving away from strict accountability with MRFSS estimates that are known to be flawed so the consequences of overharvest are lessened.

Affirmed as recommended: April 5, 2010 

Proposed changes to the Recreational Scup Management Plan: Two proposals for 2010 recreational scup quota management were brought forward for public comment. The first proposal was a restrictive measure at 11 inches/ 10 fish bag limit/ June 12-September 26. This proposal was based on initial overharvest projections. A second and less restrictive proposal, which subsequently came forward from ASMFC meetings, was presented at the public hearing by the Division, which was 10.5 inches/ 10 fish bag limit /May 24 – September 26, and a reduced bonus season for party & charter from August 23 – September 26 with an 11 inch minimum size limit and a 40 fish bag limit. At the time of the scup advisory panel meeting things were still in flux, therefore the panel did not make a consensus proposal.

The public comments all recommended option #2, the less-restrictive ASMFC-approved option, but suggested a modification to the bonus season. It was requested to start the bonus season mid to late September and extend into mid October. There were also requests to explore the possibility of removing the State of RI from the regional approach for the 2011 season, since RI continues to be penalized for high landings in other states.

The Council unanimously recommended adoption of option #2 -- 10.5 inch minimum size, 10-fish bag limit, May 24 – September 26 season, and to have the Division explore all possible options of extending the party/charter bonus season from mid September into October. I urge the adoption of the council recommendation, including the extension of the party/charter season. Based on a recent conference call

involving Mark Gibson and ASMFC board members, RI has the ability to conduct a 35-day bonus season that ends on October 11th.

Affirmed as recommended: April 5, 2010 

Proposed changes to the Commercial Floating Fish Trap Scup Management Plan: Two proposals for 2010 Commercial Floating Fish Trap Scup quota management were brought forward for public comment. The first proposal was to remain at status quo. The second proposal, presented by the RI Fish Trap Association, requested adoption of more flexible management practices – namely, by removing the provisions of section 7.11.2.2 in the rules that specify a trip limit of 25,000 pounds and by removing the regulatory set aside and reduced trip limits that start on June 7.

At the public hearing a representative for the RI Fish Trap Association spoke in favor of their proposal. There were no other comments made. The Council unanimously recommended adoption of the proposal. I urge the adoption of the council recommendation. I note that all of the RI fish trap companies have endorsed the proposal. I further note that the reporting requirements set forth by the proposal are of critical importance. While we have every reason to expect good compliance by the fish trap companies, we note the need for provisions to address any instances of non-compliance, particularly with regard to reporting. I therefore urge adoption of a rule authorizing the re-imposition of trip limits, during the season, if DEM determines that any of the companies have failed to meet their reporting requirements. If such an action were taken, DEM would be immediately notify all of the companies.

Affirmed as recommended: April 5, 2010 

Proposed changes to the Commercial Tautog Management Plan: Only one proposal for 2010 commercial tautog quota management was brought forward for public comment. The proposal was to remain at status quo in 2010. The tautog advisory panel recommended remaining at status quo for 2010. There were no specific comments made for or against this proposal at the public hearing, but one individual suggested that from April through July, there should be no gillnets allowed in the water, and no possession of female tautog allowed in the spring time. The Council unanimously recommended remaining at status quo for 2010. I agree with the Council and recommend that RI remain at status quo for this year. Staff is updating the status of tautog (jointly with MA Marine Fisheries), and we may have suggestions for changes to the management program for next year.

Affirmed as recommended: April 5, 2010 

Proposed changes to the Recreational Tautog Management Plan: Only one proposal for 2010 recreational tautog quota management was brought forward for public comment. The proposal was to remain at status quo in 2010. The tautog advisory panel recommended remaining at status quo for 2010. At the public hearing there was only one comment made and that was in support of status quo. The Council unanimously supported remaining at status quo for the 2010 recreational tautog management

plan. I urge adoption of the Council's recommendation. However, I note that staff is updating the status of tautog (jointly with MA Marine Fisheries), and we may have suggestions for changes to the management program for next year.

Affirmed as recommended: April 5, 2010 

Proposed changes to the Recreational Black Sea Bass Management Plan: Two proposals for 2010 recreational black sea bass quota management were brought forward for public comment. The first proposal, offered at the AP meeting, was a restrictive measure that included a 12.5 inch minimum size, 25-fish bag limit, and two seasons: June 1 through June 30 and September 1 through September 30. This proposal was based on initial overharvest projections. At the time of the black sea bass advisory panel meeting, things were still in flux, and thus the panel did not make a consensus proposal or offer any recommendations. A second and less restrictive proposal (option 2), which emerged from ASMFC meetings conducted after the AP met, was presented at the public hearing by DEM. The revised proposal included a 12.5 inch minimum size, 25-fish bag limit, and May 22 through September 12 season.. There were several public comments made at the hearing, all in support of option #2, the ASMFC-approved option with the less restrictive measures. Again, several commenters urged DEM to press ASMFC about the unfairness of the coastwide measures under which RI was penalized this year due to overages by other states.

The Council voted unanimously to recommend adoption of option 2. Since this issue was still in flux at the federal level, the Council asked DEM to communicate to the ASMFC and MA Marine Fisheries that RI favors a continuous season for the recreational black sea bass fishery, in lieu of a split season. The Council expressed support for regulations that would avoid mid-season closures and avoid putting state recreational fishermen in conflict with federally permitted fishermen. Based on the need to maintain compliance with ASMFC requirements, I agree with the Council recommendation and urge adoption of the ASMFC recommended option for the recreational black sea bass fishery. Based on Mark Gibson's consultation with ASMFC board members, the commission will not entertain a split season in 2010. It remains unknown what the federal measures will be, so the issue of inconsistency between ASMFC and federal measures remains a possibility, and a concern.

Affirmed as recommended: April 5, 2010 

Proposed changes to the General Category Commercial Striped Bass Management Plan: Two proposals for 2010 general category commercial striped bass quota management were brought forward for public comment. The first proposal was to remain at status quo in 2010. The second proposal was to modify the June start date by moving it from June 1 to June 6. This was the Striped Bass Advisory Panel consensus proposal. There were several public comments made at the hearing, six of which supported the AP proposal, and one of which supported status quo. There were several gillnetters present at the public hearing who requested that gillnetters be allowed to take the commercial daily possession limit as bycatch. However, the gillnet prohibition is set by statute, so that issue would need to be addressed through legislation.

The Council unanimously supported adoption of the advisory panel proposal, i.e., to move the start date for the general category commercial striped bass fishery to June 6. Given the agreement within industry for shifting the date, and non-impact of the change on our ability to manage the fishery, I urge adoption of the Council's recommendation.

Affirmed as recommended: April 5, 2010 

Proposed changes to the Floating Fish Trap Commercial Striped Bass Management Plan: Two proposals for 2010 floating fish trap commercial striped bass quota management were brought forward for public comment. The first proposal was to remain at status quo in 2010. This was the Striped Bass Advisory Panel consensus option. The second proposal, offered by the RI Fish Trap Association, was to repeal the set aside and trip limit regulations. (The Fish Trap Association erroneously held back on offering the proposal at the AP meeting, so the panel was unable to pass judgment on it at that time.) At the public hearing, the representative from the RI Fish Trap Association spoke in favor of their proposal. It was noted that all fish trap companies were on board with the proposal. There were no other comments made. The Council unanimously recommended adoption of the proposal. I urge the adoption of the council recommendation. As with the related scup proposal, I note that the reporting requirements set forth by this new approach are of critical importance. While we have every reason to expect good compliance by the fish trap companies, we note the need for provisions to address any instances of non-compliance, particularly with regard to reporting. I therefore urge adoption of a rule authorizing the re-imposition of trip limits, during the season, if DEM determines that any of the companies have failed to meet their reporting requirements. If such an action were taken, DEM would immediately notify all of the companies.

Affirmed as recommended: April 5, 2010 

Proposed changes to the Recreational Striped Bass Management Plan: Only one proposal for 2010 recreational striped bass quota management was brought forward for public comment. The proposal was to remain at status quo in 2010. The striped bass advisory panel recommended remaining at status quo. There was only one comment made at the public hearing and it was in support of status quo. The Council unanimously supported remaining at status quo. I concur with the Council's recommendation. Meanwhile, the ASMFC is continuing to review the status of striped bass, including the impacts of mycobacteriosis. We will monitor, and participate in, that ongoing process.

Affirmed as recommended: April 5, 2010 

Proposed changes to the Winter Flounder Management Plan: DEM proposed changes to the winter flounder regulations that are designed to organize and consolidate the winter flounder management regulations (commercial and recreational) within Part VII. Heretofore, the regulations have been spread throughout three different parts of the regulations, with several instances of overlap and inconsistency.

The proposed changes include: moving applicable language from Part XI, section 11.19 to Part VII, section 7.8 – Winter Flounder; repealing non-applicable language from Part XI under section 11.19; and deleting Map # 8 (Coastal Marine Life Management Area map) from Part XVII since it has become obsolete. The proposed revisions were all technical and clarifying changes. There was one comment made at the public hearing in support of the proposed changes. The Council unanimously supported adoption of the proposed changes to the winter flounder management plan. I urge the adoption of the proposed changes.

Affirmed as recommended: April 5, 2010 

Proposed changes to the Weakfish Management Plan: Proposed changes for 2010 weakfish management, both commercial and recreational, were brought forward for public comment. The changes were all required by ASMFC to comply with the ASMFC Fishery Management Plan for Weakfish. The changes were deemed necessary in order to respond to the very poor stock status for this species. The proposed change to the commercial regulations involved the establishment of a 100-pound possession limit during the periods June 1 – June 30 and August 7 – November 8. At all other times it shall be not more than 100 pounds. Additional bycatch provisions were also proposed. The proposed changes to the recreational regulations involved a decrease in the possession limit from six (6) fish to one (1) fish per day. There were no specific comments made for or against the proposals at the public hearing, but there were a few comments made in support of a weekly commercial possession limit of 500 pounds instead of the required daily commercial possession limit of 100 pounds. DEM noted that ASMFC would not likely favor this option in view of the significant restrictions that been placed on this species up and down the coast. There was also a question about the gear types affected by the bycatch requirement, since there was no specificity in the proposed regulation.

At the Council meeting, DEM noted the ASMFC plan did not allow for any aggregate landings provisions; it specifically holds that vessels must be limited to 100 pounds per vessel per calendar day, or per trip, whichever is shorter.

Based on the need to comply with ASMFC requirements, the Council unanimously supported adoption of the proposed changes. However, the Council suggested that the language pertaining to the bycatch requirements be reviewed by DEM for clarity regarding affected gear types.

Based on the need to comply with ASMFC requirements, I agree with the Council recommendation and urge adoption of the new commercial and recreational possession limits as set by ASMFC. Additionally, the Division will review the proposed language and work to clarify the bycatch provision to make it as clear as possible, while remaining in compliance with ASMFC requirements.

Affirmed as recommended: April 5, 2010 