



Rhode Island
Department of Environmental Management

DIVISION OF FISH AND WILDLIFE

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TO: W. Michael Sullivan, Director DEM
FROM: Robert Ballou, Acting Chief, DFW
DATE: December 16, 2010
SUBJECT: Request for Decision on October 19, 2010 Marine Fisheries Hearing Items

Proposed regulatory changes pertaining to -- (1) commercial licensing, including the three sector management plans, (2) the Division's authority to adjust seasons and allocations among gear types for quota-managed species, and (3) fish traps -- have moved through the regulatory process and are hereby presented for final decision.

The matters were the subject of a public hearing held on October 19, 2010, and subsequent consideration by the RI Marine Fisheries Council at their November 1, 2010 meeting. Supporting documentation submitted along with this memorandum include the minutes of the 7/20/10 RIMFC Industry Advisory Committee meeting, the public hearing summary document, summary of public hearing comments, and the applicable portion of the minutes from the 11/1/10 RIMFC meeting. The proposed changes are summarized below.

Having reviewed the entire record, and conferred with staff, I hereby urge adoption of the proposed changes as noted 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.

Proposed amendments to shellfish, finfish, and crustacean sector management plans

These management plans are required to be updated annually, per RIGL 20-2.1-9(5), in association with modifications to the licensing regulations. There are no significant changes being proposed in the plans this year; rather, the modifications are in the form of updates to our existing management programs, which are consistent with the associated proposed changes to the licensing regulations. As you know, we have a long-term goal of further developing these plans into more comprehensive documents; but for now, there are no significant changes being proposed.

There were no specific comments offered at the public hearing on the three plans. There were some who disagreed with the Division's stated intent to improve management of the soft-shell clam fishery by establishing a Conanicut Point Shellfish Management Area, decreasing the possession limit for non-management area waters to 6 bushels per day, and tightening the regulatory restrictions on the use of dredging and mechanical harvest techniques. But, from a planning perspective, the Division stands by those recommendations as appropriate for consideration during the upcoming regulatory review process.

The Council did not make any specific recommendations regarding the adoption of the management plans, as modified.

I recommend adoption of the finfish, shellfish, and crustacean sector management plans, as modified.

Proposed amendments to the commercial fishing licensing regulations

Shellfish. With regard to *quahogs*, the status quo allows for one new license/endorsement to be issued for every 3 eligible licenses (MPLs, and PELs with a quahog endorsement) that retire (i.e., 3:1 exit/entry ratio). Under that scenario, 16 new Commercial Fishing Licenses (CFLs) with quahog endorsement would be made available for 2011. The Council's Industry Advisory Committee (IAC) supported the status quo proposal. At the public hearing, several attendees voiced support for an open access fishery, or at least a 1:1 exit/entry ratio. At the Council meeting, the Council moved to consider a compromise proposal – i.e., a new 2:1 exit/entry ratio for the quahog fishery. The Division responded by noting that the number of individuals that are licensed to fish in this fishery is more an industry-based economic issue than a resource management issue. With the SAFIS system in place, and with the Division's plans to refine the resolution of shellfish landings data with regard to areas fished, the Division will have the ability to set harvest limits by area. As such, the number of people participating in the fishery is becoming less relevant from a resource management perspective. The Division therefore agreed that the new standard would strike an appropriate balance, allowing for a significant number of new licenses while not flooding the fishery with new participants. The Council voted unanimously to recommend adoption of a new 2:1 exit/entry ratio for the quahog fishery. This would allow for 25 new CFLs with quahog endorsements for 2011.

As supported by the Council, and the Division, I urge adoption of the new standard of a 2:1 exit/entry ratio for new licenses/endorsements in the quahog fishery.

With regard to *soft-shell clams*, the status quo allows for one new license/endorsement to be issued for every 5 eligible licenses (MPLs, PELs with soft shell clam endorsements, and CFLs with soft shell clam endorsements) that retire (5:1 exit/entry ratio). Under that scenario, 12 new soft-shell clam endorsements would be made available for 2011. The IAC supported the status quo proposal. At the public hearing, several attendees voiced support for an open access fishery, or at least a 1:1 exit/entry ratio. At the Council meeting, the Council moved to maintain the status quo. The Division responded that it could support a 5:1 exit/entry ratio, with the caveat that, to prevent localized depletions, sustainable levels of removal will need to be established for the fishery, either through effort control, possession limit adjustments, area-specific quotas, or a combination thereof.. The Council voted unanimously to recommend adoption of the status quo – 5:1 exit/entry ratio – for the soft-shell clam fishery, allowing for 12 new CFLs with soft-shell clam endorsements for 2011.

As supported by the Council, and the Division, I urge adoption of status quo (5:1 exit/entry ratio) for the soft-shell clam fishery.

Restricted Finfish. With regard to restricted finfish, the status quo allows for one new license/endorsement to be issued for every 5 eligible **and active** licenses (MPLs and PELs with restricted finfish endorsements) that retire (5:1 exit/entry ratio). Under that scenario, 3 new restricted finfish endorsements would be made available for 2011. The IAC supported the status quo proposal. At the public hearing, several attendees voiced support for an open access fishery, or at least a 1:1 or 5:3 exit/entry ratio. At the Council meeting, the Council moved to maintain the status quo. The Division responded by noting that finfish licensing is essentially an allocation issue. With fixed quotas, the number of licensed fishermen merely reflects the number of slices to be cut out of the pie. The Division continues to defer to the

Council and industry regarding proper demographic replacement in the fishery and the needs of current fishermen relative to new entrants. As such, the Division noted that it could support maintenance of the status quo. The Council voted unanimously to recommend adoption of the status quo – a 5:1 exit/entry ratio – for the restricted finfish fishery, allowing 3 new endorsements to be made available in 2011.

As supported by the Council, and the Division, I urge adoption of status quo (5:1 exit/entry ratio) for the restricted finfish fishery.

To date, new restricted finfish endorsements have been issued as new CFLs, which limits the holder to Basic Harvest levels. Those levels are one-half of the possession limits associated with the Full Harvest Levels, which apply to holders of PELs and MPLs. The licensing regulations allow for a holder of a CFL with a Restricted Finfish endorsement to automatically upgrade to a PEL with a Restricted Finfish endorsement after actively fishing over a two-year period. As of 2009, there were only 14 individuals who held CFLs with Restricted Finfish endorsements. In contrast, there were 1,182 individuals who held MPLs and PELs with Restricted Finfish endorsements. The Division has found that it makes no sense to hold 14 individuals to a Basic Harvest limit when they constitute less than 1% of the overall fishery. Accordingly, the Division proposed that all new licenses/endorsements in the restricted finfish fishery be issued as new PELs, and that all existing CFLs w/RFF be automatically upgraded to PELs w/RFF. Inherent in the proposal would be the elimination of CFLs w/RFF as a license category.

The IAC supported the Division's proposal. There was no opposition offered at the public hearing. And the Council voted unanimously to recommend adoption.

As supported by the Council, and the Division, I urge adoption of the proposal to eliminate CFLs with Restricted Finfish as a license category, upgrade all existing CFLs w/RFF to PELs w/RFF, and issue all new restricted finfish endorsements as PELs w/RFF.

Lobsters. With regard to lobsters, the Council voted to recommend status quo -- no new lobster endorsements -- which was also recommended by the IAC and the Division. Comments made at the public hearing were in support of moving forward with the trap allocation transfer program, and allowing holders of a multipurpose license a small pot allocation. Given the nature of the trap allocation program, it stands to reason no licensing-related changes in the lobster fishery are warranted at this time.

As supported by the Council, and the Division, I urge adoption of the status quo with regard to lobster licensing.

Title Change. The Division proposed changing the title of the licensing regulations from "Rules and Regulations Governing the Management of Marine Fisheries" to "Commercial Fishing Licensing Regulations." The change would simply clarify the description of the regulatory document that sets forth all of the commercial licensing regulations. There were no objections to the title change.

As supported by the Council, and the Division, I urge adoption of the title change.

Proposed amendments to authorize the Division to adjust seasons and allocations among gear types for quota-managed species

Under existing regulations (set forth in Part 3.2.1), the Division is authorized to adjust **allocations** and **possession limits** for quota-managed species that are governed by regional or federal FMPs. The regulations allow the Division to make the adjustments without having to go to notice or seek advance review by the Council. The affected species include: summer flounder, scup, black sea bass, striped bass,

bluefish, and tautog. The Division routinely exercises this authority – e.g., by adjusting the possession limits for fluke, and balancing subperiod allocations to address overages or underages.

The Division proposed two changes to Part 3: 1) additional authorization to adjust *seasons* for quota-managed species that are governed by regional or federal FMPs; and 2) additional authorization to *redistribute allocations among gear types* for quota-managed species that are governed by regional or federal FMPs.

With regard to the proposed change pertaining to *seasons*, the impetus was the mid-season change made by the feds this year for the recreational black sea bass fishery. Initially, the ASMFC had required states to enact a 2010 season running from May 22 – September 12, and DEM followed suit by adopting that season for Rhode Island. Then, in April, final 2009 harvest estimates became available, enabling Rhode Island to extend the season to October 11, and to establish a second season from November 1 to December 31. Since the Division’s authority to adjust regulations was limited to possession limits and (sub-period) allocations, the Division could not simply extend the season via an administrative filing. A public hearing had to be conducted and the Council had to convene to offer its advice on the issue. Had the change at the federal level come later in the season, it’s possible that DEM would not have been able to meet the APA requirements, and the RI fishery would have had to close prematurely. The proposed change would only allow DEM to act in accordance with notification from federal authorities to alter a season per a regional or federal FMP.

With regard to the proposed change pertaining to the *redistribution of allocations among gear types*, there is only one gear type that receives an allocation – fish traps. Thus, the only effect the proposed change would have is on the Division’s ability to move any uncaught fish from the fish trap quota/allocation to the general fishery without having to go to hearing or seek advance review from the Council. DEM was faced with this very situation this year regarding scup. Notwithstanding the absence of explicit regulatory authority to move the fish, DEM sought and received approval from the fish trap companies, and enacted the transfer. The proposed regulatory change would simply codify the authority.

To ensure full transparency, and to provide the Council and the community with an opportunity to review and comment on any changes made in accordance with section 3.2.1, the Division also proposed a new provision (3.2.1-3) that would codify a public review process.

The proposal was offered, conceptually, at the IAC meeting, but not thoroughly vetted. The proposal was met with considerable opposition at the public hearing. Those opposed were philosophically against the notion of extending the Division’s authority. There was also concern expressed over the wording of the proposal, with many suggesting that it should be narrowed in its applicability. At the Council meeting, the Division noted that it was willing to re-evaluate the proposal in light of the public hearing comments. The Council voted unanimously to refer the proposal back to the Division for further review and clarification.

I urge that no new regulatory provisions associated with the Division’s authority to adjust seasons and allocations among gear types for quota-managed species be adopted at this time. The Division is prepared to re-evaluate the issue, and if warranted, offer a revised proposal at a subsequent public hearing.

Proposed amendments to the fish trap regulations

The Division proposed two technical amendments to the fish trap regulations. One would simply update the Division of Fish and Wildlife mailing address from the Government Center in Wakefield to the Marine Fisheries Office in Jamestown. The other would add a new section that prohibits the sub leasing

of permitted fish trap locations. That prohibition is already set forth in statute, so the amendment simply aligns the regulations with existing law. There was no opposition to the changes offered at the public hearing, and the Council voted unanimously to recommend adoption.

As supported by the Council, and the Division, I urge adoption of the proposed amendments to the fish trap regulations.

Approved for filing as presented



W. Michael Sullivan, Director

12/20/2010

Date