



RHODE ISLAND
DEPARTMENT OF ENVIRONMENTAL
MANAGEMENT

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TDD 401-222-4462

To: Mark Gibson
Acting Chief, DFW

From: W. Michael Sullivan
Director

A handwritten signature in black ink that reads "W. Michael Sullivan".

Date: December 4, 2008

Re: Decision on October 23, 2008 Marine
Fisheries Public Hearing Items

I am writing in response to your November 12, 2008 memorandum regarding the regulatory proposals presented at the October 23, 2008 public hearing.

I have reviewed all of the supporting documentation forwarded with your memo – the minutes of the two RIMFC Industry Advisory Committee meetings (7/29/08 and 8/19/08), the public hearing summary document, the summary of the (10/23/08) public hearing comments, and the minutes of the (11/3/08) Marine Fisheries Council meeting.

Pursuant to my review and consideration of all of the above-noted information, I have reached the following decisions on these matters.

Management Plans for the Shellfish, Finfish, and Crustacean Sectors.

Please modify the plans to comport with the final decisions, set forth in this memo. Once the plans are reconciled with the final licensing decisions, and underlying rationale, please file them with the Secretary of State, per standard procedure.

Commercial Fishing Licensing Regulations

Shellfish

Quahogs – I concur with your recommendation, and that of the Council, to *retain the 3:1 exit/entry ratio, as applied to holders of Principal Effort Licenses (PELs) with Quahog endorsements that retired in 2008*. I note that there was no opposition to the proposal at hearing. Since there were 39 such retirees, 13 new Quahog endorsements on Commercial Fishing Licenses (CFLs) will be available in 2009. Please add the words “Principal Effort” to sub-section 6.1-10(b), as proposed, to clarify that the exit-entry ratio does indeed apply to “Principal Effort Licenses, eligible to harvest quahogs” that retire, consistent with past practice and this current decision.

The SAFIS database shows that of the 39 retired licenses, just 6 landed quahogs in 2007 (and of the 34 Multi-Purpose Licenses that retired in 2008, just one landed quahogs in 2007). Thus, by offering 13 new endorsements in 2009, we are continuing to grow the fishery in a very modest way, consistent with past practice and ongoing indications of a stable quahog stock in state waters.

Soft-shell Clams – – I concur with your recommendation, and that of the Council, to *continue to refrain from issuing any new soft-shell clam endorsements, i.e., to maintain status quo*. I note that there was no opposition to the proposal at hearing. Although we have very little information to go on, what we do know about this resource and fishery is that there appear to be signs of localized depletion in portions of the Upper Bay, and the potential trend toward overfishing, first noted last year, could be continuing. I believe that capping effort, at least for the time being, at 1,532 licenses is a rational approach to guard against overfishing. While I am well aware of our staffing and funding constraints, I reiterate my directive to you and your staff to develop a proposed stock assessment program for this fishery. Our lack of stock assessment data for the fishery continues to put us at a disadvantage in attempting to establish an appropriate management response. Once you and your staff have identified the programmatic elements, we need to strategize on its implementation.

Finfish

Restricted Finfish – I concur with your recommendation, and that of the Council, to *retain the 5:1 exit/entry ratio for the restricted finfish endorsement category, applied to the total number of licenses eligible to harvest restricted finfish that were active in the fishery in 2007 and retired in 2008*. Since there were a total of 11 such active licenses that retired in 2008 (3 MPLs and 8 PELs w/restricted finfish), 2 new restricted finfish endorsements on CFLs will be available for 2009. I note that there was some opposition to the proposal at hearing, but also some support. The rationale for my decision to support the proposal is consistent with that set forth last year – we need to be sensitive to the concerns of existing license holders, who are continuing to struggle under very

restrictive quotas, yet we also need to provide some opportunity for people to enter, and advance within, the fishery. The continued use of a 5:1 exit/entry ratio, applied to active license that retire from the fishery, strikes a reasonable balance between those two competing objectives.

In sub-section 6.1-10(a), please replace the phrase “were active in the fishery” with the phrase “had some reported landings of restrictive finfish,” and also add the word “calendar” before the word “year” – all as proposed -- to clarify that the phrase “active” as used in the sub-section, refers to any landings of finfish during the prior calendar year, consistent with past practice and this current decision.

Lobsters

Last year, a place-holder provision pertaining to lobster trap allocation program was adopted. The provision was adopted in anticipation of the transfer component of the trap allocation program. I felt that it was important to have a provision in place that would allow any transfer recipient to obtain a license so they could fish their traps. My intent was not to influence the nature of the still-pending transfer program, but rather to make sure that if the program, once adopted, did allow non-licensed individuals to obtain trap allocations, those individuals would not be prohibited from fishing their allocation due to the prohibition on new lobster license/endorsements.

I viewed the place-holder language then, as I do now, as being moot unless a transfer program that allowed for the transfer of trap allocations to unlicensed individuals was adopted

While there was no proposal offered this year to change the above-noted provision (section 6.7-7.1), I note that there were several people who commented on the issue at the public hearing, and a spirited discussion on the issue at the Council meeting. I further note that the Council was unable to formulate a recommendation on the matter due to procedural constraints (lack of a quorum due to a recusal). Given the comments and concerns expressed, I feel that an effort to address and resolve the issue, if only to avoid any confusion or unintended consequences, is warranted.

On the one hand, I think that a simple technical clarification to section 6.7-7.1 could resolve the lion’s share of concern expressed at hearing and at the Council meeting – i.e., in subsection (a), the reference to “section 15.14.2 of Part XV of the marine fisheries regulations” could be amended to refer more specifically and accurately to “section 15.14.2-11.” But even that proposed fix might still raise questions, since section 15.14.2-11 notes that the purpose of the “pending” transfer program is to “allow for the transferability of initial Area 2 LTAs among permit holders.” In my view, it remains to be seen whether the program will be restricted to transfers among permit/license holders, or made open to

anyone who wishes to bid. But that is a policy discussion that has yet to take place. Accordingly, I would support, at this time, a full repeal of section 6.7-7.1, with the understanding that the issue will be re-addressed when the trap allocation transfer program is taken up for consideration.

Additional Changes to Licensing Regulations

I concur with your recommendations, and those of the Council, to enact the following additional changes to the licensing regulations. I note that with the exception of item #2, there was general support for, and no opposition to, the proposals at hearing.

1. **Clarify the “actively fishing/actively participating” standard** in the following ways:

- Preceding two years means preceding two *calendar* years
- Must be some activity in *each of the two* preceding calendar years
- Activity must be demonstrated via dated transaction records (i.e., dealer slips), *which in turn must be verified by dealer reports to the Department*
- *Activity can be demonstrated via properly documented dockside landings*

The first three changes will better define the current standard, which calls for at least 75 days of activity in the preceding two years. The fourth change will enable lobster fishermen who do not have dealer slips, but do have legitimate dockside sales of lobsters, to use other documentation relating to the sales to earn credit for the at-sea activity that generated those sales. Please enact all of the proposed changes.

2. **Clarify “crew member” status** by requiring individuals to be at least 16 years of age in order to begin earning credit for time served as crew members. I note that there is currently no minimum age qualification for crew member status. A standard of 16 years of age comports with the State’s child labor laws, and is thus appropriate. Please enact that change.
3. **Establish 16 as the new minimum age for applicants seeking new licenses via lotteries.** I note that there is currently no minimum age to hold a commercial fishing license, and that is not subject to change. I further note that there is currently no minimum age to acquire a license, fish it, and thereby achieve status as a new license applicant; that too is not subject to change. The proposed change involves the scenario where the Department has moved through the list of priority applicants for a new license and needs to select among a pool of additional license applicants, none of whom have any history or experience in marine fisheries. In such a case, the Department would employ a lottery. Currently, there is no minimum age to enter such a lottery, meaning that a five-year old applicant would be on equal footing with an adult applicant. The proposed change, which I am hereby adopting, will require all participants in a lottery pool involving applicants without any priority status to be at least 16 years of age.

4. ***Establish a medical and military hardship clause relating to the sale of vessel and gear.*** I note that any licensed fisherman who has been actively fishing and retires can sell their business, and the buyer can get a new, equivalent license. However, if the seller was ill or injured or called up for active duty, and as a result was unable to fish at least 75 days during the preceding two year period, there is currently no provision that would enable them to sell their business to someone who could then get a license. The proposed change, which I am hereby adopting, will enable a licensed fisherman who is prevented from meeting the actively fished standard due to a medical or military hardship to retire and sell their business to a buyer who can obtain a new, equivalent license, as long as the seller was actively fishing during the preceding four-year period.
5. ***Repeal the provision that requires all state license holders to carry observers or samplers upon request by the Department.*** I note that there is no provision in state law that supports this regulation. Unless and until statutory authority governing the issue is sought and enacted, it stands to reason that the regulatory provision needs be pulled. If the Division determines that observer coverage is necessary for the proper management of certain state waters fishery operations, and if vessel owners/operators are unwilling to take observers voluntarily, I would ask you to address and resolve the issue of liability protection – pertaining to both the vessel owner/operator and the observer/department – and then coordinate with my office on a legislative proposal. Please enact the repeal.
6. ***Allow for the downgrade of multi-purpose licenses.*** This is a technical clarification that will codify an existing administrative practice. Simply put, it will allow any multi-purpose license holder to obtain, in lieu thereof, one or more single-sector licenses/endorsements, likely at less cost, during an annual renewal period. Please enact the change.
7. ***Clarify the basic harvest level for restricted finfish.*** This too is a technical clarification that will codify an existing enforcement policy. Per existing regulation, the basic harvest level is one-half of the possession limits associated with the full harvest level. That creates an awkward standard when the full harvest level involves an odd number of fish – e.g., 5 striped bass per day. The regulatory change, which I am hereby adopting, will formalize the practice of rounding up, to the nearest whole number, to establish the basic harvest level, when the full harvest level is an odd number of fish -- e.g., in the case of striped bass, the basic harvest level will now officially be 3 fish per day.
8. ***Miscellaneous technical corrections and clarifications.*** Please enact all of the various technical corrections and clarification, in addition to those noted above, that were set forth in the public hearing document.

Deferrals

Upgrade Restrictions – I concur with your recommendation, and that of the Council, to refer this issue back to the Industry Advisory Committee for further discussion. I think that there is merit in seeking to prevent individuals who obtain new licenses upon the purchase of a vessel and gear from replacing the vessel with a much larger vessel, thereby significantly increasing the level of effort associated with the prior license. But I agree that the matter needs further vetting, since we don't want to enact a regulatory provision that would unreasonably restrict fishermen from expanding their businesses. I look forward to hearing back from you and the IAC on a refined version of this proposal.

Change in Residency -- I appreciate the interests of licensed RI residents who want to be able to retain their RI licenses if they move to another state and become residents of that state. I understand that this issue relates solely to the restricted finfisheries, since state law is clear on the resident-only restrictions for the shellfish and lobster fisheries. And I further understand that there is no clear and direct provision in state law that governs the change-of-residency issue vis-à-vis restricted finfish licenses. I note, however, that the licensing statute includes a number of residency preference provisions, and it is my belief that those provisions reflect a strong interest and intent on the part of the RI General Assembly to maximize benefits and opportunities in the State's quota fisheries for RI residents. In recognition thereof, when a RI resident takes up residency in another state, I think it is reasonable to hold that he or she does so with the understanding that certain privileges associated with being a RI resident – such as the opportunity to fish on the State's quota – may be lost in the process. I therefore feel that the Department has been acting properly, in a manner consistent with legislative intent, when we have denied renewal requests for restricted finfish licenses by former RI residents who have moved to another state. I recognize that the General Assembly did grandfather all license holders, including a relatively small number of non-residents, into the new licensing program when it was adopted in 2002. However, that was a transitional provision, applicable only to those who held licenses in 2002. In my view, it does not follow that the General Assembly intended to grandfather all subsequent finfish license holders, regardless of their residency status.

I note that while there was some support for the proposal at public hearing, the Council was unable to formulate a recommendation on this issue. As stated above, I feel that the Department is on solid footing with regard to our administrative position on the matter, and I therefore feel that there should be no regulatory changes made regarding this issue unless and until the matter is brought to the General Assembly and clarified via a statutory amendment. I see no need to pursue the issue as a Departmental initiative, but we will be available, as a resource, if anyone from the fishing community wishes to pursue the issue on their own.