



## RHODE ISLAND

### DEPARTMENT OF ENVIRONMENTAL MANAGEMENT

#### OFFICE OF THE DIRECTOR

235 Promenade Street, Room 425  
Providence, Rhode Island 02908

**To:** Conor McManus  
Chief, Division of Marine Fisheries

**From:** Terrence Gray, P.E.  
Acting Director

**Date:** March 23, 2022

**Re:** Final Decisions Pertaining to the February 7, 2022 Marine Fisheries Public Hearing Items and March 7, 2022 Marine Fisheries Council meeting.

I have received and reviewed your memo to me, dated March 8, 2022 (attached), regarding the regulatory matters that were subject to a public hearing on February 7, 2022 and the RI Marine Fisheries Council (Council) meeting on March 7, 2022. I have also received and reviewed all relevant supporting documentation, including the public comments received and the draft Council meeting minutes. The specific regulatory items, and the final decisions for each, are set forth below.

I note that due to the pending nature of final decisions pertaining to finfish regulations to be considered by the Council at their April 4, 2022 meeting (recreational black sea bass, recreational scup, recreational summer flounder, and commercial striped bass), the regulatory amendments pertaining to items 1 and 3 below will not be filed until after that Council meeting, with an anticipated effective date of May 1, 2022.

#### 1. **2022 recreational tautog management**

**Decision:** Amend the rule by establishing a new 21-inch maximum size limit, with an allowance for one trophy fish greater than 21 inches per person per day, which will apply during all open sub-periods throughout the year. This new rule will not take effect until May 1, or thereabouts, based on the Division's regulatory filing schedule.

I recognize that the comments and recommendations regarding proposals to amend the recreational tautog management program for 2022 were mixed. The public record reflects strong feelings, both pro and con, on making changes to the program, with many offering compelling positions in favor of a proactive, conservative approach to protecting the resource

and many others offering equally compelling positions in favor of maintaining status quo given the stock status. The Council thoughtfully and thoroughly considered the matter and recommended adoption of a new maximum size limit with a single trophy-fish allowance, as well as a reduced bag limit during the October 15 - December 31 season. On behalf of the Division, you recommended maintaining status quo.

As an initial step in my deliberation on the matter, I requested a follow-up consultation with the Massachusetts Division of Marine Fisheries (MADMF) and the Atlantic States Marine Fisheries Commission (ASMFC) to get a clearer understanding of the ramifications of enacting the measures recommended by the Council without unity among both member states of the Massachusetts-Rhode Island tautog stock management unit, established by the ASMFC's Fishery Management Plan (FMP) for Tautog. Pursuant to the FMP, MA and RI are obligated to seek alignment with their respective management programs. The result of this follow-up consultation was clear. MA is not planning to make any changes to their regulations for recreational tautog for 2022. A decrease in the RI bag limit during the fall/winter season would risk a shift in recreational fishing effort from RI to MA waters, prompting opposition by MA and raising the specter of noncompliance by RI with the FMP. However, MADMF signaled no opposition to the proposal of adopting a new maximum size limit with a single trophy fish allowance, given their perception that this measure would not result in a redistribution of fishing effort within the stock unit.

That insight provided the opportunity for a compromise, which I explored with you and your staff. Having considered the full range of issues presented by the public record, along with the recommendations of the Council and Division, I decided to enact that compromise, i.e., adoption of the proposed maximum size limit with a single trophy fish allowance, but not the proposed bag limit reduction.

My rationale is as follows:

- As noted above, maintaining consistency with the ASMFC's FMP for Tautog is of central importance. The compromise achieves that.
- I am aware that you and your counterpart at MADMF have agreed to convene a joint meeting of the MA Marine Fisheries Advisory Commission and RI Marine Fisheries Council during 2022 to discuss and seek alignment on opportunities to sustainably manage this shared stock. I strongly support that approach and look forward to participating in the meeting.
- Many who participated in the public comment process, as well as members of the Council, emphasized the importance of being proactive regarding the management of this important resource. While the MA-RI tautog stock management unit is not overfished and is not subject to overfishing, preliminary harvest data indicates that RI harvest of tautog in 2021 increased significantly compared to prior years. I appreciate the interests of many members of RI's recreational fishing community in seeking to protect the stock and maintain its healthy status via proactive conservation measures. I also recognize and support the Division's commitment to using sound science to

formulate their recommendations. While the estimated biological conservation associated with the new 21” maximum size provision may be negligible, there is value in taking a step toward improving the sustainable management of the stock based on its healthy condition, fidelity to local waters, and susceptibility to overharvest.

As set forth in your memo, I strongly support and commit to the following action items to address important concerns raised during the public comment process: assessing changes in effort in RI waters stemming from increased fees for party and charter licenses; achieving stricter compliance with the party and charter eTrips reporting requirement; and increasing our fishery enforcement efforts during the fall/winter fishery.

2. **2022 commercial tautog management**

Decision: Maintain status quo for 2022 consistent with the recommendation of the Division and Council, as well as the majority of public comments. It stands to reason that commercial management measures for tautog should be included in the discussion at the joint meeting of the RI and MA Marine Fisheries Councils this year.

3. **Commercial tautog tagging**

Decision: Amend the rule consistent with the recommendation of the Council and the Division of Law Enforcement, which amends the timeframe during which commercially harvested tautog must be tagged from “at the time of harvest, prior to offloading” to “prior to landing.” This will ease both compliance with and enforceability of the tagging program. This amended rule will not take effect until May 1, or thereabouts, based on the Division’s regulatory filing schedule.

4. **Aggregate program for summer flounder and black sea bass**

Decision: Amend the research pilot aggregate program rule consistent with the recommendation of the Division and Council, as well as the majority of public comments, as follows:

- Continue the pilot program for an additional year (through 2022);
- Prioritize past participants for eligibility for 2022 permits;
- Eliminate gear categories and expand number of available permits to 54;
- Continue to allow program participants to possess more than 200 lbs of summer flounder per vessel per day regardless of whether they hold a Summer Flounder Exemption Certificate;
- Amend the current pilot rule to authorize participation in both the Winter I and summer/fall sub-periods (summer flounder only);
- Continue the rule to provide for a daily weekly aggregate possession limit of summer flounder @ 7x the daily possession limit;
- Amend the rule to provide for a daily weekly aggregate possession limit of black sea bass @ 5x the daily possession limit and

- Continue with all other provisions of the pilot program that were in effect in 2021.

I appreciate the public comments received on this matter, as well as the Council's careful consideration of and recommendations pertaining to the various programmatic elements. It is clear that this program presents important opportunities for improved efficiency and safety for a significant number of fishermen. However, it is also clear that there will continue to be ramifications and risks involving the potential for reduced in-season possession limits and/or early season closures if the program continues to expand. Expanding the program, as a pilot, to allow additional participants while still limiting entry is a sound means for obtaining additional data to support future decision making. I look to the Division to continue monitor landings closely, with an eye toward ongoing program evaluation and the development of recommendations for 2023.

5. **Summer Flounder Exemption Certificate Program**

Decision: Amend the rule as proposed, consistent with the recommendations of the Division and Council, by clarifying that vessels authorized to possess more than 200 pounds of summer flounder/day may include those holding Summer Flounder Exemption Certificates as well as those holding an exempted program permit, such as a permit authorizing participation in the Research Pilot Aggregate Program.



**RHODE ISLAND**  
**DEPARTMENT OF ENVIRONMENTAL MANAGEMENT**  
**DIVISION OF MARINE FISHERIES**  
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INTER-OFFICE MEMO

TO: Terrence Gray, P.E., Acting Director

FROM: Dr. Conor McManus, Chief *MCM*

DATE: March 8, 2022

SUBJECT: Decisions regarding proposed regulation amendments that were subject of a public hearing held on February 7, 2022, and a RI Marine Fisheries Council (RIMFC) meeting on March 7, 2022. The public hearing folder contains all the necessary documentation related to this hearing, including the proposed rules that were publicly noticed and the comments received. **Please note that only those regulatory elements addressed herein were addressed at this Council meeting and are the subject of this memo; the remaining elements are to be addressed at a subsequent Council meeting planned for April 4, 2022.** Below is a summary of each of the proposed amendments that were subject of this Council meeting:

1. **2022 recreational tautog management:**

- Background: Annual review of management. A workshop was held on January 4<sup>th</sup> to solicit proposals from the public. Concerns were expressed at the workshop about the level of fishing effort on tautog that took place in 2021, particularly from out of state vessels for-hire vessels. Concern is that the stock may not be able to support the increased level of harvest that occurred in 2022, and proactive management should be taken to protect the stock. No required changes per the ASMFC Fishery Management Plan (FMP) for 2022, as the current stock status for the Massachusetts-Rhode Island (MARI) tautog stock indicates the stock is not overfished and overfishing is not occurring.
- Proposal: Two proposals were noticed for consideration, as follows:

Proposal 1 (Industry proposal):

| Mode | Min. Size | <u>Maximum Size</u> | Season            | Poss. limit |
|------|-----------|---------------------|-------------------|-------------|
|      | 16"       |                     | Jan. 1 – March 31 | Closed      |

|                            |  |                   |                         |
|----------------------------|--|-------------------|-------------------------|
| Gen. Rec and Party/Charter | <u>One (1) fish only may be greater than twenty-one inches (21")</u> | April 1 – May 31  | 3 fish/day              |
|                            |  | June 1 – July 31  | Closed                  |
|                            |  | Aug. 1 – Oct. 14  | 3 fish/day              |
|                            |  | Oct. 15 – Dec. 31 | <del>5</del> 4 fish/day |

Proposal 2 (Industry proposal to amend the party/charter vessel possession limit):

Proposed language: Licensed Party/charter vessels are not subject to the ten (10) fish per vessel per calendar day restriction. The maximum per vessel possession limit is determined by multiplying the total number of anglers or spearfishers by the daily possession limit divided by two (2).

- Public comment:
  - ≈ 55 individual comments in support of proposal # 1.
  - ≈ 10 individual comments provided in support of status quo.
  - RISAA in support of proposal # 1.
  - RIPCBA in support of status quo.
  - All commenters who identified themselves as recreational anglers/RISAA members in support of proposal # 1.
  - ≈ 4 commenters affiliated with the P/C industry (i.e., captains) in support of proposal # 1.
  - ≈ 7 individual comments in support of a 3 fish/day possession limit in the fall sub-period.
  - Several comments supported a desire to be proactive with management and a conservative management approach.
  - 6 comments opposed to proposal #2 regarding amending the party/charter vessel limit.
- RIMFC: 4- 2 in support of adopting proposal # 1 as noticed.
- Marine Fisheries: Maintain status quo for 2022. Several factors played into this position. From a biological perspective, the most recent stock assessment update for the MA-RI stock of tautog indicated that the stock is not overfished, and overfishing is not occurring. While the Division appreciates and supports efforts that improve sustainability of the resource, it should be noted that the proposals put forth do not result in substantive biological conservation. The proposed trophy fish and bag reduction proposals cumulatively result in approximately a 2-4% reduction in harvest based on 2018-2020 data. These proposals were also presented to Massachusetts, as the guidelines of the fisheries management plan with the ASMFC indicates that new management measures should be adopted jointly by states within the same stock unit to ensure that new management changes by a given state does not shift harvest pressure to another. At this time, Massachusetts is unable to move forward with new recreational tautog measures for 2022, and thus Rhode Island would be subject to deviating from the guidelines of the FMP. While the Division supports status quo for the 2022 fishing season, there are several ongoing or new efforts that the Department is pursuing and presented

to the RIMFC to show their commitment to the concerns raised: (1) monitoring whether party and charter license fee increases result in changes in tautog harvest, (2) implementing stricter compliance with the party and charter eTrips reporting requirement, (3) a commitment to increased enforcement for the tautog fall fishery, and (4) holding a future joint RIMFC and Massachusetts Marine Fisheries Council meeting to openly discuss these concerns and collaboratively plan for 2023.

**2. 2022 commercial tautog management:**

- Background: Annual review of management. A workshop was held on January 4<sup>th</sup> to solicit proposals from the public. No change in quota for 2022.
- Proposal: Two proposals were noticed for consideration, as follows:

**Proposal 1 (Industry proposal):**

| Min. Size                 | <u>Maximum Size</u> | Season             | Allocation | Poss. limit |
|---------------------------|---------------------|--------------------|------------|-------------|
| <del>16"</del> <u>15"</u> | <u>19"</u>          | Jan. 1 – March 31  | Closed     |             |
|                           |                     | April 1 – May 31   | 42.5%      | 10 fish/day |
|                           |                     | June 1 – July 31   | Closed     |             |
|                           |                     | Aug. 1 – Sept. 15  | 15%        | 10 fish/day |
|                           |                     | Sept. 16 – Oct. 14 | Closed     |             |
|                           |                     | Oct. 15 – Dec. 31  | 42.5%      | 10 fish/day |

**Proposal 2 (Industry proposal):**

| Min. Size | Season             | Allocation | Poss. Limit                      | <u>Closed Days</u>              |
|-----------|--------------------|------------|----------------------------------|---------------------------------|
| 16"       | Jan. 1 – March 31  | Closed     |                                  |                                 |
|           | April 1 – May 31   | 42.5%      | <del>10</del> <u>25</u> fish/day | <u>Sun., Tues., Thurs., Sat</u> |
|           | June 1 – July 31   | Closed     |                                  |                                 |
|           | Aug. 1 – Sept. 15  | 15%        | 10 fish/day                      |                                 |
|           | Sept. 16 – Oct. 14 | Closed     |                                  |                                 |
|           | Oct. 15 – Dec. 31  | 42.5%      | 10 fish/day                      |                                 |

- Public comment: 6 comments provided in support of status quo; 2 comments in support of proposal #2 as noticed.
- RIMFC: 6 – 0 in support of maintaining status quo.
- Marine Fisheries: Maintain status quo for 2022 for size limits, based on similar FMP concerns as conveyed for recreational tautog management. There

is no Division preference on in-season bag limits or weekly schedules, though Division of Law Enforcement (DLE) has voiced concerns over the intermittent opening and closings for tautog within a week.

### 3. **Commercial tautog tagging:**

- **Background:** Division proposal to provide clarity in regard to time that tagging of fish must occur. Proposal also provides more flexibility for the fishermen tagging the fish and provides for safer at sea operations.
- **Proposed language:** All tautog harvested and landed in Rhode Island must be tagged ~~at the time of harvest~~, prior to offloading.
- **Public comment:** 4 comments provided in support of the proposal as noticed.
- **RIMFC:** 6 - 0 in support of amending the rule as noticed, with the exception of changing the word “offloading” to “landing” consistent with comments made by DLE. Final language change supported: All tautog harvested and landed in Rhode Island must be tagged ~~at the time of harvest~~, prior to ~~offloading~~ **landing**.
- **Marine Fisheries:** Support for amending rule as recommended by the Council.

### 4. **Aggregate program for summer flounder and black sea bass:**

- **Background:** Expanded aggregate opportunities have been proposed by industry for several years, however data to determine potential impacts on harvest rates and seasonal closures has been lacking. To gather data, a new pilot program was adopted in January 2019, which included 12 permits issued across several gear types. In January 2020, the rule was amended to provide for additional participants (29 permits issued) and broaden the data set. A sunset clause of December 31, 2022, was also adopted at this time to allow the program to end and a full data analysis presented “*with a view to developing recommendations for continuance of a program beyond 2021.*” This data was presented at a public workshop held January 10, 2022, which provided information that the Division then used to develop the proposed full program regulation (see Proposal next section).
- **Proposal:** Two proposals were noticed:
  - Continue the pilot program and regulation (Part 12 – Research Pilot Aggregate Program) with an increase in the no. of available permits and a sunset clause of December 31, 2022; **or**
  - Adopt a new rule (“Part 19 - Aggregate Program for Summer Flounder and Black Sea Bass”), which would expand the aggregate opportunities to a greater no. of licensed fishermen. Public comment was sought on specific program elements that were deemed of particular significance.
- **Public comment:** 16 comments provided:
  - **Continue as pilot or new rule:** Majority of comments (all but 1) in support of maintaining a program, either as a pilot or new program (new rule); mostly unspecified if preferring continuation of the pilot program or a new

- rule.
- Summer Flounder Exemption Certificate required to land summer flounder >200 lbs/day: 3 comments opposed to requiring the certificate for the summer sub-period for summer flounder.
- Summer flounder seasons - Participate in Winter I or the Summer/Fall aggregate programs, or both: 3 comments supporting participation in either sub-period, not both.
- Black Sea Bass season: 2 comments specifically in support of including black sea bass in the program; 3 comments specifically in support of a May 1 through December 31 season; 1 comment specifically opposed to black sea bass seasons outside of the summer season; 1 comment specifically opposed to not including an early spring season
- Possession Limits: All comments in support of a possession limit equal to 7 daily limits; some were ok with a 6 day limit; 1 comment ok with a 5 day limit.
- Amend eligibility criteria: 4 comments in support of prioritizing past participants; 1 comment in support of open access
- Amend # of available permits: 3 comments in support of eliminating gear categories; 1 comment in support of expanding to 60 available permits; 1 comment in support of expanding to 72 available permits; 3 comments in support of expanding # of participants; 1 comment in support of adding 10 new participants.
- Term of program: 1 comment in support of extending program through 2023; 1 comment in support of maintaining the program indefinitely
- Abandon program: Most comments in support of maintaining a program, either as a pilot or new rule; 1 comment strongly opposed to continuing any program without more strict compliance measures in place (written comment provided)
- RIMFC: 6 - 0 in support of the following:
  - Continue the pilot program for one additional year (through 2022) and do not adopt the new rule proposed.
  - Prioritize past participants for eligibility.
  - Expand participation by increasing available permits to 54; eliminate gear categories.
  - Summer flounder:
    - Participants can participate in both Winter I and Summer/Fall sub-periods.
    - Summer Flounder Exemption Certificate not required to land > 200 lbs/day.
    - Weekly aggregate possession limit = to 7x the daily possession limit.
  - The weekly aggregate possession limit for black sea bass be 5x the daily possession limit.
- Marine Fisheries: The Division conveyed their ability to manage the program as either a continued pilot program or in the form of a new program (i.e. new

regulation). The Division highlighted to the Council that there is risk of creating increased closed fishing days for the commercial summer flounder and black sea bass fisheries and urged the Council to deliberate on what level of risk they would like to assume. The Division believes that additional helpful data could be obtained through continuation of a pilot program, but only if some elements of the pilot program were altered to allow for testing additional behavioral or effort changes. The Division offered their perspectives on individual elements they would support if the program continued as a pilot or if it became a new regulation. The Division supports the continued pilot program with modifications as proposed by the Council.

5. **Summer Flounder Exemption Certificate Program:**

- **Background:** In review of the rule and program, the Division determined that the rule lacks specific clarity in that a possession limit of summer flounder > 200 lbs/vessel/day may be authorized to persons holding a valid Summer Flounder Exemption Certificate **or** are enrolled/permitted in an approved “exempted” program (e.g., proposed Aggregate Program for Summer Flounder and Black Sea Bass) but do not hold a Summer Flounder Exemption Certificate. Currently, the rule only authorizes a possession limit of summer flounder > 200 lbs/vessel/day **only** via a Summer Flounder Exemption Certificate.
- **Proposed language:** No person shall possess or land summer flounder in excess of two hundred (200) pounds per vessel or per person per day unless that person holds a valid Exemption Certificate **or** exempted program permit established pursuant to this Chapter.
- **Public comment:** One comment in support as proposed.
- **RIMFC:** 6 - 0 in support of amending the rule as noticed.
- **Marine Fisheries:** Support as noticed and recommended by the Council.