



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: April 8, 2022

Re: Final Decisions Pertaining to the February 7, 2022 Marine Fisheries Public Hearing Items and April 4, 2022 Marine Fisheries Council meeting.

I have received and reviewed your memo to me, dated April 7, 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 April 4, 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 as follows:

1. **2022 Recreational Black Sea Bass Management**

Decision: Amend the rule, consistent with the recommendation of the Council, which amends the seasons and possession limits for 2022, and provides for separate regulations for the for-hire industry, as follows:

Mode	Min. Size	Season	Poss. limit
Private/General Recreational	15" 16"	Jan. 1 – June 23 May 21	Closed
		June 24 May 22 – Aug. 31	3 2 fish/day
		Sept. 1 – Dec. 31	7 3 fish/day
<u>Party/Charter</u>	<u>16"</u>	<u>Jan. 1 – June 17</u>	<u>Closed</u>
		<u>June 18 – Aug. 31</u>	<u>2 fish/day</u>
		<u>Sept. 1 – Dec. 31</u>	<u>6 fish/day</u>

2. **2022 Recreational Scup Management**

Decision: Amend the rule as proposed, and consistent with the recommendations of the Council and Division, which increases the minimum size from nine inches (9”) to ten inches (10”) for the general recreational fishery; and from eight inches (8”) to nine inches (9”) for special shore sites.

3. **2022 Recreational Summer Flounder Management**

Decision: Amend the rule, consistent with the recommendation of the Council, which decreases the minimum size and bag limit, as follows.

Mode	Min. Size	Season	Poss. limit
General Recreational	19 18”	May 3 – Dec. 31	6 4 fish/day
Special Shore Sites	The minimum size of two (2) of the six (6) four (4) fish may be seventeen inches (17”). The minimum size for the remaining four (4) two (2) fish shall be nineteen (19”) eighteen inches (18”) .	May 3 – Dec. 31	6 4 fish/day

4. **Commercial Striped Bass Gill Netting Prohibition**

Decision: Maintain status quo.

I note and appreciate the interest of members of the commercial gill net fishery to convert a portion of their regulatory discards of striped bass into landings. I also appreciate the considerable public comment on the matter, and the Council’s deliberation and recommendation. My review of the public record was supplemented by consultation with the Divisions of Marine Fisheries and Law Enforcement. Based on this review, I find that the proposal to lift the ban on the commercial harvest of striped bass by gillnet is not warranted at this time. I offer the following points in support of this decision:

- Public comment received was overwhelmingly in opposition to the proposal.
- The current stock status for striped bass is overfished with overfishing occurring. If enacted, the proposal could give rise to an increase in effort in the fishery, as only 13 of the 199 gill net endorsements on commercial licenses are currently active. Any potential increase in effort would be ill advised while seeking to rebuild the resource.
- There is a lack of data quantifying and characterizing the striped bass bycatch from gill nets in Rhode Island waters, particularly with regard to sizes and discard mortality rates. While the conversion of dead discards into landings by current fishery participants does not itself present an increase in effort or mortality, it is unclear to what extent live fish would also be converted into landings. And as noted above, there is an unknown level of risk associated with the potential for increased effort by latent license holders who hold the gill net endorsement. A better understanding of these important biological implications is needed.

- The general-category commercial striped bass season routinely closes just a few weeks after opening; it is likely that an increase in participation and harvest would further shorten the season.
- The Division of Law Enforcement expressed concern regarding their ability to enforce the proposed rule. In particular, their ability to measure pounds of striped bass on board, as well as pounds of other targeted species on board, would vary over the course of a given trip, rendering at-sea enforcement of the bycatch provision difficult.

While I value, and am inclined to heed, the Council’s recommendations on all regulatory matters, on challenging issues such as this one, I am particularly interested in the Council’s rationale for their recommendation. In my review of the record from the Council meeting, I did not find enough solid, substantive rationale to support their recommendation to adopt this proposal.

5. **2022 Commercial General Category Striped Bass Management**

Decision: Amend the rule, consistent with the recommendation of the Council, which amends the season and sub-period allocation percentages as follows:

Min. Size	Season	Allocation	Poss. limit
34”	Jan. 1 – May 19 31	Closed	
	May 20 June 1 – June 30 July 5	60 50%	5 fish/day
	July 1 6 – Dec 31	40 50%	5 fish/day

I note that there were many public comments in favor of status quo. However, in matters like this that do not affect the Division’s ability to manage the fishery, I place considerable weight on the Council’s recommendation which I view as their best judgement on how to balance competing interests in the fishery.

6. **Commercial Striped Bass Management - Floating Fish Trap Sector to General Category Sector Late Season Allocation Transfer**

Decision: Amend the rule, consistent with the recommendation of the Council. However, modify the new regulatory provision by replacing “shall” with “may.” The intent of the proposed amendment is to expedite the discussions and resulting decisions pertaining to the annual rollover of remaining quota from the floating fish trap (FFT) sector to the general category (GC) sector; and to establish a new 50% standard for determining the amount of remaining quota to be rolled over. Currently, there is no specific date by which such discussions must commence, and no standard for the amount of rollover. I support the adoption of a new date, namely September 1, by which discussions shall commence, and a new 50% target for the rollover amount. But I also support the need to afford the Division latitude in consulting with the FFT operators prior to transferring quota from the FFT to GC sector; and to ensure that there is sufficient quota remaining in the FFT allocation to cover any GC quota overages from the earlier seasons and reopen the GC fishery based on a quota amount that can be managed

effectively. Accordingly, a new regulatory standard coupled with continued discretionary authority afforded to the Division best addresses the combined interests of the industry and the Division.

Final language: On September 1, a minimum of 50% of any remaining FFT allocation may be transferred to the General Category and, if such transfer occurs, the GC fishery shall be opened until that allocation is estimated to be harvested.



RHODE ISLAND
DEPARTMENT OF ENVIRONMENTAL MANAGEMENT
DIVISION OF MARINE FISHERIES
3 Fort Wetherill Road
Jamestown, Rhode Island 02835

INTER-OFFICE MEMO

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

From: Conor McManus, Chief

Date: April 7, 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 April 4th.

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 other elements of the proposed rules that were publicly noticed were addressed at the Council meeting on March 7, 2022, and are not the subject of this memo. Below is a summary of the proposed amendments:

1. **2022 recreational black sea bass management:**

- **Background:** Annual review of management. A workshop was held on January 4th to solicit proposals from the public. The MAFMC is requiring harvest reductions in the form of an increase in minimum size for 2022 due to exceedance of the Recreational Harvest Limit (RHL) in preceding years. At the time of noticing, a coastwide quota reduction of 28% was anticipated for 2022, which resulted in three “Original” proposals; since noticing, MAFMC has finalized this reduction @ 20.7%, which resulted in revised “Alternate” proposals intended to match the new reduction requirement.
- **Proposal:** Three proposals were noticed:

Original Proposal 1 (Industry proposal):

Min. Size	Season	Poss. limit (per person)
+5” 16”	Jan. 1 – June 23 1	Closed
	June 24 2 – Aug. 31	3 2 fish/day
	Sept. 1 – Dec. 31 Nov. 30	7 3 fish/day

Original Proposal 2 (Industry proposal):

Mode	Min. Size	Season	Poss. limit
General Recreational	15" <u>16"</u>	Jan. 1 – June 23 <u>1</u>	Closed
		June 24 <u>2</u> – Aug. 31	3 <u>2</u> fish/day
		Sept. 1 – Dec. 31 <u>Nov. 30</u>	7 <u>3</u> fish/day
<u>Party/Charter</u>	<u>16"</u>	<u>Jan. 1 – June 30</u>	<u>Closed</u>
		<u>June 30 – Dec. 31</u>	<u>3 fish/day</u>

Original Proposal 3 (Division proposal): This proposal was constructed as a means to meet the expected 28% reduction while maintaining management measures as close to status quo as could be achieved.

Min. Size	Season	Poss. limit
15" <u>16"</u>	Jan. 1 – June 23 <u>20</u>	Closed
	June 24 <u>21</u> – Aug. 31	3 <u>2</u> fish/day
	Sept. 1 – Dec. 31	7 <u>3</u> fish/day

• **Public comment:**

- ≈ 57 individual comments provided support for proposal # 1.
- ≈ 18 individual comments provided support for proposal # 2.
- RI Party Charter Boat Assoc. (RIPCBA) in support of a modified version of proposal # 2 upon change in quota reduction to 20.7% (summarized below - written comment provided).
- RI Saltwater Anglers Assoc. (RISAA) in support of a modified version of proposal # 1 upon change in quota reduction to 20.7% (summarized below - written comment provided).
- Nearly all commenters who identified themselves as members of RISAA members in support of proposal # 1.
- Nearly all commenters who identified themselves as affiliated with the party/charter (namely captains) industry in support of proposal # 2 as noticed (note that comments were received prior to the change in quota reduction to 20.7%).
- Aquidneck Island Striper Team in support of proposal # 1.
- Several commenters opposed the 6 fish/day possession limit for P/C and expressed an issue of equity with a higher possession limit for P/C.
- ≈ 4 comments opposed to increasing the minimum size.
- 1 commenter supported an LOA structure for participation in the higher possession limit for the P/C industry (written comment provided).

Alternate Proposal 1 (RISAA):

Min. Size	Season	Poss. limit
15" <u>16"</u>	Jan. 1 – June 23 <u>May 21</u>	Closed
	June 24 <u>May 22</u> – Aug. 31	3 <u>2</u> fish/day
	Sept. 1 – Dec. 31	7 <u>3</u> fish/day

Alternate Proposal 2 (RIPCBA):

Mode	Min. Size	Season	Poss. limit
General Recreational		No comment/defer	
<u>Party/Charter</u>	<u>16"</u>	<u>Jan. 1 – June 17</u>	<u>Closed</u>
		<u>June 18 – Aug. 31</u>	<u>2 fish/day</u>
		<u>Sept. 1 – Dec. 31</u>	<u>6 fish/day</u>

Alternate Proposal 3 (modified Division proposal):

Min. Size	Season	Poss. limit
15"	Jan. 1 – June 23 <u>11</u>	Closed
<u>16"</u>	June 24 <u>12</u> – Aug. 31	3 <u>2</u> fish/day
	Sept. 1 – Dec. 31	7 <u>4</u> fish/day

- **RIMFC:** 7-0 in support of adopting Alternate Proposals 1 and 2 as follows:

Mode	Min. Size	Season	Poss. limit
Private/General Recreational	15" <u>16"</u>	Jan. 1 – June 23 <u>May 21</u>	Closed
		June 24 <u>May 22</u> – Aug. 31	3 <u>2</u> fish/day
		Sept. 1 – Dec. 31	7 <u>3</u> fish/day
<u>Party/Charter</u>	<u>16"</u>	<u>Jan. 1 – June 17</u>	<u>Closed</u>
		<u>June 18 – Aug. 31</u>	<u>2 fish/day</u>
		<u>Sept. 1 – Dec. 31</u>	<u>6 fish/day</u>

- **Marine Fisheries:** Support to adopt any of the Alternate Proposals as ASMFC compliant and manageable for the Division. The Division will review 2022 recreational harvest data after the season concludes to assess the influence of these measures on recreational harvest dynamics.

2. 2022 recreational scup management:

- **Background:** Annual review of management. A workshop was held on January 4th to solicit proposals from the public. The MAFMC is requiring harvest reductions in the form of an increase in minimum size for 2022 due to exceedance of the RHL in preceding years.
- **Proposal:** Division proposal FMP compliant.

Mode	Min. Size
General Rec.	9" <u>10"</u>
Special Shore Sites	8" <u>9"</u>

- **Public comment:** 4 comments in support as noticed.
- **RIMFC:** 7 – 0 in support of amending the rule as noticed.

- Marine Fisheries: Support to amend the rule as noticed.

3. **2022 recreational summer flounder management:**

- Background: Annual review of management. A workshop was held on January 4th to solicit proposals from the public. A liberalization in recreational harvest of 16.5% has been authorized for summer flounder in 2022 due to a 25% increase in the RHL in 2022. Through the public hearing and public comment period, proposals were received but were deemed to not be viable as the authorized liberalization was exceeded. Alternate proposals (reflected below) were therefore developed by the Division that were technically authorized to reflect the original proposals submitted as close as possible.
- Proposal: Two proposals were noticed:

Proposal 1 (Industry proposal):

Min. Size	Season	Poss. limit
19" <u>One (1) fish only may be sixteen inches (16") minimum size.</u>	May 3 – Dec. 31	6 fish/day

Note: Proposal would negate need for special shore sites for recreational summer flounder.

Proposal 2 (Industry proposal):

Mode	Min. Size	Season	Poss. limit
General Recreational	19" <u>18"</u>	May 3 – Dec. 31	6 fish/day
Special Shore Sites	The minimum size of two (2) of the six (6) fish may be seventeen inches (17"). The minimum size for the remaining four (4) fish shall be nineteen (19") <u>eighteen inches (18")</u> .	May 3 – Dec. 31	6 fish/day

- Public comment:
 - ≈ 52 individual comments provided in support of proposal # 1.
 - ≈ 22 individual comments provided in support of proposal # 2.
 - RISAA in support of proposal # 1.
 - RIPCBA in support of proposal # 2.
 - Nearly all commenters who identified themselves as recreational anglers/RISAA members in support of proposal # 1 as noticed.
 - Nearly all commenters who identified themselves as affiliated with the P/C industry in support of proposal # 2 as noticed.
 - ≈ 18 individual comments provided supporting reducing the possession limit to 4 fish/day, or a reduced (i.e., < 6/day) unspecified possession limit.

Alternate Proposal 1:

Mode	Min. Size	Season	Poss. limit
General Recreational	+9 <u>18.5"</u>	May 3 – Dec. 31	6 fish/day
Special Shore Sites	The minimum size of two (2) of the six (6) fish may be seventeen inches (17"). The minimum size for the remaining four (4) fish shall be nineteen (19") <u>eighteen and one-half inches (18.5")</u> .	May 3 – Dec. 31	6 fish/day

Alternate Proposal 2:

Mode	Min. Size	Season	Poss. limit
General Recreational	+9 <u>18"</u>	May 3 – Dec. 31	6 <u>4</u> fish/day
Special Shore Sites	The minimum size of two (2) of the six (6) <u>four (4)</u> fish may be seventeen inches (17"). The minimum size for the remaining four (4) <u>two (2)</u> fish shall be nineteen (19") <u>eighteen inches (18")</u> .	May 3 – Dec. 31	6 <u>4</u> fish/day

Alternate Proposal 3: This proposal was constructed as an alternate means to meet the expected 16.5% liberalization.

Mode	Min. Size	Season	Poss. limit
General Recreational	19"	May 3 – Dec. 31	6 <u>7</u> fish/day
Special Shore Sites	The minimum size of two (2) of the six (6) <u>seven (7)</u> fish may be seventeen inches (17"). The minimum size for the remaining four (4) <u>five (5)</u> fish shall be nineteen (19").	May 3 – Dec. 31	6 <u>7</u> fish/day

- RIMFC: 5-2 in support of adopting alternate proposal 2.
- Marine Fisheries: Support for any of the proposals as manageable for the Division. The Division provided background on the status of neighboring states' recreational summer flounder regulations and summer flounder biology to inform the discussion.

4. **Commercial striped bass gill netting prohibition:**

- **Background:** Commercial harvest of striped bass by gill net is currently prohibited by rule. Several years ago the commercial striped bass fishery was restricted to the rod and reel sector only, but has since been expanded to include other commercial gear types other than gill netting. Statute (RIGL §20-4-12) prohibits harvest of striped bass by gillnet (or any method other than hook and line) in Narragansett Bay and w/i 3 miles to the east of Charlestown Breachway inlet. Gillnetter's fishing in RI state waters have made claim that they are discarding striped bass that could otherwise be kept and brought to market. This proposal was brought forward by industry to address this.
- **Proposal:** Provide for the limited commercial harvest of striped bass by gill net as incidental catch only, subject to the maximum daily possession limit of 5 fish/vessel/day, 34" minimum size, and season openings applicable to the general category commercial fishery.
- **Proposed language:** Gill netting ~~Prohibition~~ for Striped Bass: ~~No~~ **Any** person ~~shall take or possess any~~ **in possession of** striped bass while gillnetting, or while hauling a gillnet, **shall do so as incidental catch only with an equivalent poundage of other species required to be on board the vessel.**
- **Public comment:**
 - ≈ 8 individual comments in support of the proposal.
 - ≈ 14 individual comments opposed to the proposal.
 - Narragansett Surf Casters Club opposed.
 - RICRRA opposed.
 - 2 petitions/form letters with ≈ 169 signatures opposed.
 - 1 comment in support of allowing gillnet harvest of striped bass as incidental catch from 10/1 to 12/31 only (written comment provided).
 - 1 comment not opposed if adopting a sunset clause in effect treating as a pilot program, reporting discards, and a lower starting possession limit (written comment provided).
- **RIMFC:** 4-2-1 in support of amending the rule as noticed.
- **Marine Fisheries:** The Division provided background that the striped bass stock is overfished and overfishing is occurring. The Division discussed the various data that was investigated to understand prospective impacts to directed effort on striped bass commercially (e.g. landings data, licensing data, NEFOP data, discard mortality rates for striped bass) in an effort to facilitate an informed discussion.

5. **2022 commercial general category striped bass management:**

- **Background:** Annual review of management. A workshop was held on January 4th to solicit proposals from the public. RI 2022 commercial quota is set @ 148,889 lbs.
- **Proposal:** Two proposals were noticed:

Proposal 1 (Division proposal):

Min. Size	Season	Allocation	Poss. limit
34"	Jan. 1 – May 19 18	Closed	
	May 20-19 – June 30	60%	5 fish/day
	July 1 – December 31	40%	5 fish/day

Proposal 2 (Industry proposal):

Min. Size	Season	Allocation	Poss. limit
34"	Jan. 1 – May 19 31	Closed	
	May 20- June 1 – June 30 July 5	60 50%	5 fish/day
	July 1 6 – December 31	40 50%	5 fish/day

- Public comment:
 - ≈ 10 individual comments in support of proposal # 1.
 - Rhode Island Commercial Rod and Reel Association in support of proposal # 2
 - 1 petition/form letter with ≈ 57 signatures in support of maintaining status quo allocation of 60/40
 - 2 individual comments in support of proposal # 2.
 - 1 individual comment in support of opening May 23.
- RIMFC: 4-3 in support of adopting proposal 2 as noticed.
- Marine Fisheries: Support for either proposal as manageable for the Division.

6. Commercial striped bass management - floating fish trap sector allocation transfer to the general category sector:

- Background: New industry proposal submitted to alter the process and timing for any late season allocation transfer from the floating fish trap sector to the general category sector.
- Proposed language: ~~If DEM estimates that the floating fish trap sector will not fully utilize its striped bass allocation prior to the end of the season, the DEM may transfer all or a portion of the floating fish trap sector allocation into the general category fishery. DEM will consult with the floating fish trap licensees or their designee prior to enacting any such transfer, and will maintain written correspondence of this consultation~~ **On September 1, a minimum of 50% of the remaining FFT allocation shall be transferred to the General Category and the GC fishery shall be opened until that allocation is estimated to be harvested.**
- Public comment:
 - ≈ 3 individual comments in support of the proposal.

- ≈ 3 individual comments opposed.
 - RICRRA in support of the proposal.
 - 1 petition/form letter with ≈ 57 signatures in support of the proposal
- RIMFC: 5-1-1 in support of amending the rule as noticed.
- Marine Fisheries: The Division notes and appreciates the proposal seeking to effectively utilize the quota allocated to floating fish trap (FFT) and general category (GC) sectors; however, at this time, the Division supports status quo. The Division notes that the FFT sector has long maintained the need for available quota in September and October in the event that fish enter RI waters and become available for harvest, and that any such late season harvest is of critical importance to their industry. This late September/early October migration of striped bass reported is corroborated by acoustic telemetry data from Rhode Island waters. The Division understands that the timing of past transfers has not always resulted in appreciable harvest by the GC sector, in that the fish may already have moved out of RI waters at the time of transfer. Irrespective of the final rule, the Division is committed to work with industry to seek a solution equitable to both sectors. If status quo is adopted, the Division will further enhance its dialogue with FFT operators to ensure transfers are made timely when appropriate. The Division also would note that this regulation was amended in June 2018, at which time the hard date of October 15 for the transfer of “all or a portion” of the floating fish trap (FFT) sector allocation into the general category (GC) fishery was removed. This change allowed for added flexibility to manage this fishery with the goal of fully utilizing the quota. The Division notes that as the striped bass resource rebuilds, the goal is that available quota will be utilized by both sectors.