



RHODE ISLAND
DEPARTMENT OF ENVIRONMENTAL MANAGEMENT

OFFICE OF THE DIRECTOR

235 Promenade Street, Room 425
Providence, Rhode Island 02908

To: Jason McNamee
Chief, Marine Resource Management

From: Janet Coit
Director

Date: April 12, 2019

Re: Final Decisions Pertaining to March 11, 2019 Marine Fisheries Public Hearing Items

I have received and reviewed your memo to me, dated April 8, 2019, and attached herewith, regarding the public hearing items from the March 11, 2019 public hearing. I have also received and reviewed all relevant supporting documentation, including the public hearing documents and public comments, as well as the summary report (draft meeting minutes) from the April 1, 2019 meeting of the RI Marine Fisheries Council (Council).

I hereby approve all the recommendations, as set forth in your memo, which, with the exception of item 1, are consistent with those provided by the Council at the Council's April 1, 2019 meeting. The specific regulatory items, and the final decisions for each, are as follows:

1. Recreational Summer Flounder

- Decision: (1) Adoption of the amended provisions, which shifts the opening of the season for the entire recreational fishery from May 1 to May 3; and (2) adoption of the new special shore provision, which establishes a minimum size of seventeen inches (17") for up to two summer flounder, with the balance of the six-fish daily possession limit remaining at a minimum size of nineteen inches (19"). I note that this new special shore-fishing allowance pertains only to the seven designated shore sites previously established for the special shore-fishing program for scup.
- Comment: While I appreciate the Council's advice and recommendation regarding a sixteen inch (16") minimum size allowance at these sites, I concur with the Division's recommendation to maintain compliance with ASMFC on the issue and maintain consistency with the minimum-size provisions of Connecticut's similar shore-based program. The RI program is a positive step towards providing improved access to our recreational fisheries for shore anglers. I urge the Division to monitor the performance of the program this 2019 season and, if warranted, revisit the program

next year, with a view to considering a further decrease in the special minimum size allowance (i.e., to 16”) and/or an increase in the number of summer flounder allowed to be retained under the special shore-based minimum size provision.

2. Commercial Summer flounder

- Decision: Adoption of the amended provision, which extends the open days each week during the summer sub-period from four (4) to seven (7) days.

3. Recreational Black Sea Bass

- Decision: Status quo

4. Commercial Black Sea Bass

- Decision: Status quo

5. Recreational Scup

- Decision: Adoption of the amended provisions, which (1) open the fishery to all sectors on January 1st annually, and (2) increase the possession limit for the for-hire sector from 45 to 50 fish/day in September and October, annually.

6. Commercial Scup

- Decision: Adoption of the amended provisions pertaining to minimum mesh-size requirements for trawl vessels, which adjust the minimum scup possession threshold to 1,000 pounds from October 1 through April 14 annually, or 200 pounds from June 16 through September 30 annually.

7. Recreational Striped Bass

- Decision: Status quo

8. Commercial Striped Bass - General Category

- Decision: Adoption of the amended provisions, which (1) shift the closing date of the first sub-period from August 4 to June 30, and (2) shift the opening date of the second sub-period from August 5 to July 1.
- Comment: I recognize that public comment was split among the three options that were noticed, with no clear consensus, and that the Council was unable to reach agreement on a recommendation. I further recognize that with 30 percent of the State’s allocated commercial quota dedicated to the second sub-period, that season is always relatively short, lasting just nine (9) days in 2018. I note and appreciate the concerns raised by the public and the Council regarding equitable access to the resource for both inshore and offshore sectors, the unintended impact the RI season may have on illegal fishing in the EEZ, and how overlaps in the RI and Massachusetts seasons can affect price. I commend the Division for developing a compromise

proposal that essentially splits the differences among the various options, while attempting to address the above-noted concerns.

9. Commercial Striped Bass – Floating Fish Trap Sector

- Decision: Status quo

10. Recreational Tautog

- Decision: Adoption of the amended provision, which decreases the possession limit for the for-hire sector from 6 fish/person/day to 5 fish/person/day during the October 15 – December 31 sub-period, consistent with the provisions governing the overall recreational fishery. (Provided, however, that the for-hire sector remains not subject to the ten (10) fish/vessel/day restriction that governs the rest of the recreational fishery.)
- Comment: While I recognize that this adjustment corrects a mistake made during the amendment process last year, and is necessary to maintain compliance with ASMFC, I further recognize that there is strong interest on the part of RI's for-hire industry to maintain a 6-fish/person possession limit during this season to compensate for the perceived inequity with MA, which maintains a 1-fish/person possession limit during RI's closed season in June and July. Accordingly, I support the Division's commitment to explore the feasibility of a 6-fish/person possession limit during the Oct 15- Dec 31 sub-period via a conservation equivalency proposal through the ASMFC.

11. Recreational Bluefish

- Decision: Status quo

12. Commercial Bluefish

- Decision: Adoption of the amended provision, which increases the weekly possession limit during the May – November sub-period from 6,000 pounds to 8,000 pounds.

13. Commercial Blacknose Sharks

- Decision: Adoption of the amended provision, which adds blacknose sharks to the list of prohibited species, consistent with ASMFC specifications.

14. Recreational Cod

- Decision: Adoption of the amended provisions, which replace the specified minimum size and possession limit with references to the applicable federal rules in federal waters.
- Comment: This approach will ensure state-federal consistency in accordance with the federal management program for cod. It will enable the Division to update measures

in state waters in accordance with any changes to the federal-waters provisions, and enact such updates readily, without having to notice the updated measure(s) via regulatory amendment. I support this approach, provided the Division continues to keep the recreational fishing community well notified regarding specified minimum size and possession limits and any changes thereto.

15. Commercial Menhaden #1 – Commercial Vessel Restrictions

- Decision: Adoption of the amended provision, which broaden the restrictions pertaining to gear (nets), closed areas, closed days, and reporting requirements to apply to all commercial vessels (except those engaged in small-scale fisheries), not just vessels using purse seines.

16. Commercial Menhaden #2 – Fish Storage Capacity and Vessel Length

- Decision: Status quo

17. Commercial Menhaden #3 – Landing/Possession Limits

- Decision: Adoption of the amended provision, which replaces all references to “landing limit(s)” with “possession limit(s).”

18. Commercial Menhaden #4 -- Possession Limit Trigger

- Decision: Status Quo

19. Commercial Menhaden #5 -- Transiting

- Decision: Adoption of the amended provision, which clarifies that all commercial vessels in RI waters are subject to the applicable possession limits pertaining to RI waters, and are precluded from exercising the transiting provisions set forth at Subsection 1.6(C)(1).

20. Commercial Menhaden #6 - Episodic Event Set Aside Program

- Decision: Adoption of the amended provision, which shifts the end date for the Episodic Event Set Aside Program from November 1 to October 31.

21. Whelk #1 -- Minimum Size

- Decision: Status Quo
- Comment: I appreciate the considerable input provided on this matter, agree that the proposed new definition for determining minimum size is not acceptable, and direct the Division to continue to work with industry to develop improved language and consistent measuring methods.

22. Whelk #2 -- Pot Tagging

- Decision: Adoption of the new provisions, which establish a new whelk pot tagging program, to take effect in 2020, for the purpose of maintaining compliance with and enforcing the existing 300-pot limit.
- Comment: In further developing the program, the Division shall readdress provisions governing routine loss, catastrophic loss, and gear rotation, and re-notice these provisions prior to adoption and implementation.

23. Lobster Trap Tags

- Decision: Adoption of the amended provision, which provides for the use of catastrophic loss tags as replacement tags if original tag orders are not received and presumed lost.

24. Upper Narragansett Bay Trawling Area #1

- Decision: Adoption of the amended provision, which clarifies the dates during which the Upper Narragansett Bay Trawling Area is closed to trawling.

25. Upper Narragansett Bay Trawling Area #2

- Decision: Adoption of the amended provision, which better aligns the written delineation of the area with the (now repealed) map of the area.
- Comment: Given the need to further clarify the description of the Area to match the former map of the area, which has since been repealed from regulation, and given the Council's recommendation to consider use of lat/long coordinates, in addition to landmarks, to demarcate the Area, I urge the Division to re-address and then re-notice the description of the Area, in accordance with the former map of the area.

26. Gill Net Tags

- Decision: Adoption of the amended provision, which extends the time period for the validity of the orange tags currently being used to January 1, 2021.



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

INTER-OFFICE MEMO

TO: Janet Coit, Director

FROM: Jason McNamee, Chief *JM*

DATE: April 8, 2019

SUBJECT: Decisions regarding proposed amendments to the RI Marine Fisheries regulations that were the subject of a public hearing conducted on March 11th and RI Marine Fisheries Council (RIMFC) meeting on April 1st. The public hearing folder contains all the necessary documentation related to this hearing, including a summary of the oral comments made at the hearing, written comments received, the noticed annotated regulations, and public notice.

1. **2019 recreational Summer flounder management (section 3.10.1):**

- **Background:** Annual review of the management program. A workshop was held on February 11th to provide stock status and solicit proposals from industry.
- **Proposal:** No amendments were proposed for the general recreational fishery (proposal #1). A special shore provision was noticed (proposal #2) as follows:

Mode	Min. Size	Season	Poss. Limit (person/day)
Recreational	19"	May 1 – Dec. 31	6 fish
<u>Special Shore Recreational</u>	<u>16"</u>	May 1 – Dec. 31	<u>2 fish</u>

- **Public comments:** Support to maintain status quo for the general recreational fishery (proposal #1) and also to adopt the special shore regulations (proposal #2) as proposed.
- **RIMFC:** 6 - 0 in support as proposed (one abstention). It was clarified that, for the special shore program, the possession limit would remain at 6 fish/day, with an allowance for 2 of the 6 fish to be at a reduced (e.g., 16") minimum size. In response to the Division's recommendation that a 17" minimum size would be preferred given consistency with ASMFC, the Council supported maintaining a 16" minimum size

citing overwhelming public sentiment that catching a 17” fish from shore would still be difficult.

- **Marine Fisheries:** Support for adoption of the special shore program, at a 17” minimum size, and a two-day delay in the opening of the recreational season, to May 3, to compensate for the modest amount of additional harvest anticipated. The Division notes that ASMFC’s review and pending approval of the RI proposal hinges on the 17” minimum size. The Division sought review by ASMFC of a 16” minimum size, as well as a 17” minimum size; in response, the ASMFC’s Technical Committee recommended an approach consistent with the special shore programs in CT and NJ, i.e., a 2-inch decrease from the minimum size applicable to the general recreational fisheries in those states. If RI were to adopt a 16” minimum size for the program, it is highly likely that the program would not pass muster with ASMFC.
- **Timing to file:** Immediately.

2. **2019 commercial Summer flounder management (section 3.10.2):**

- **Background:** Annual review of the management program. This matter was first brought to hearing in November 2018. However, due to the federal government shutdown, and the resulting delay in the release of the new benchmark stock assessment and 2019 quota, the decision at that time was to remain at status quo and re-address at this hearing. At the time of the hearing, a 15% increase in quota was anticipated, however at this time it has been confirmed that the 2019 quota has increased $\approx 73\%$ (from ≈ 1 million lbs to 1.7 million lbs). A workshop was held on February 11th to provide stock status and to solicit proposals from industry.
- **Proposal:** Four options were noticed, which involved different scenarios of closed days during the summer sub-period:

Option	Min. Size	Season	Allocation	Days closed	Starting Poss. Limit (vsl/day)
Option 1: Status quo	14”	1/1 – 4/30	54%	N/A	100 lbs
		5/1 – 9/15	35%	Fri/Sat/Sun	50 lbs
		9/16 – 12/31	11%	N/A	100 lbs
		2/5 – 4/30	Agg. Program	N/A	1,500 lbs/2 wks
<u>Option 2</u>		5/1 – 9/15	35%	Fri/Sat/ Sun	50 lbs
<u>Option 3</u>		5/1 – 9/15	35%	Fri /Sat/ Sun	50 lbs
<u>Option 4</u>		5/1 – 9/15	35%	Fri/ Sat / Sun	50 lbs

Upon learning the magnitude of the quota increase, the Division conducted additional analysis regarding the number of additional open days the quota increase could support during the summer sub-period. As a result of this analysis, the Division offered at hearing that all three days could be re-opened without a season closure based on average 2018 harvest rates (total # of days in season with all seven days open = 138 days; at an avg. rate of 4,000lbs/day, season could last 149 days).

Option	Min. Size	Season	Allocation	Days closed	Starting Poss. Limit (vsl/day)
<u>Council recommendation</u>	14"	5/1 – 9/15	35%	Fri/Sat/Sun	50 lbs

- Public comments: Majority of comments in support of re-opening all three days currently closed.
- RIMFC: 7 - 0 in support of re-opening all three closed days.
- Marine Fisheries: Support for re-opening all three closed days. It is noted that the Division's longstanding directive/policy is to maintain open seasons at economically viable possession limits, per RIMFC advice. For summer flounder, this means not dropping below the 50-pound daily possession limit. Re-opening all three days is consistent with this directive/policy, in that the Division projects that the season can remain open throughout the subperiod at 50 pounds. The Division will monitor harvest rates closely and either adjust possession limits upward if landings fall short of the sub-period quota; or close the sub-period if landings unexpectedly push close to the sub-period quota.
- Timing to file: Immediately.

3. **2019 recreational Black sea bass management (section 3.7.1):**

- Background: Annual review of the management program. A workshop was held on February 11th to provide stock status and to solicit proposals from industry. An operational assessment is scheduled for 2019, which could result in a quota change for 2020. The 2018 projected recreational harvest is projected to exceed the 2019 Recreational Harvest Limit (RHL) for black sea bass. Although that could have prompted the need for a reduction in harvest for 2019 (i.e., a shorter season or reduced bag limit), the overage and associated reduction were relatively small ($\approx 7\%$). Accordingly, the ASMFC approved status quo management measures for 2019.
- Proposal: No amendments were proposed. Current management:

Min. Size	Season	Poss. Limit (person/day)
15"	6/24 – 8/31	3 fish
	9/1 – 12/31	7 fish

- Public comments: Support for both status quo and an earlier opening date in the summer sub-period. Many comments expressed concern that the June 24 opening date results in a lack of access to the fishery by bay anglers, particularly shore anglers, as the fish have left the bay by this date.
- RIMFC: 6-1 in support of status quo. *D. Monti* expressed strong concern that bay anglers are essentially closed out of the fishery with a June 24 opening date as the fish have left the bay by this date. He presented 2017 - 2018 recreational data to demonstrate the lack of shore-based recreational harvest with a late June opening date. The Council discussed the possibility of submitting an ASMFC conservation equivalency (C/E) proposal for an earlier start date for 2019, but decided to hold off until 2020 given the current timing constraint.

- Marine Fisheries: Support for status quo. The Division recognizes the frustration with the June 24 opening date as being late for bay anglers. In 2017, the fishery opened on May 25, but that was based on also enacting a September 22 – October 21 closure as a trade-off. That closure was not well received and thus discontinued in 2018, which pushed the opening date for 2018 back to June 24. Management advice for 2020 is likely to change in response to the operational assessment scheduled for the fall of 2019; this should enable a revisiting of the RI management program for next year, with a view to pursuing an earlier opening date.
- Timing to file: Immediately. (Note: changes to be filed are only for the purpose of aligning the regulations with modification made on May 9, 2018 via the Division’s authority to amend seasons and/or possession limits under R.I. Gen. Laws § 20-1-12.1).

4. **2019 commercial Black sea bass management (section 3.7.2):**

- Background: Annual review of the management program. This matter was first brought to hearing in November 2018. However, at that time, an additional proposal was submitted during the public comment period that generated interest by the public and Council (option 3 below). At that time, the Council recommended that the regulations remain at status quo and the matter be brought to hearing again. A workshop was held on February 11th to provide stock status and to solicit proposals from industry, which resulted in options 2 and 3 as shown below.
- Proposal: Three options were noticed:

Option	Min. Size	Season	Allocation	Starting Possession Limit (lbs)
<u>Option 1:</u> Status Quo.	11”	1/1 – 4/30	25%	500 (vsl/week)
		5/1 – 6/30	25%	50 (vsl/day)
		7/1 – 7/31	19.5%	50 (vsl/day)
		8/1 – 9/14	Closed	
		9/15 – 10/31	19.5%	50 (vsl/day)
		11/1 – 12/31	11%	50 (vsl/day)
<u>Option 2:</u> Industry proposal - combine sub-periods.	11”	1/1 – 4/30	25%	500 (vsl/week)
		5/1 — 6/30	25%	50 (vsl/day)
		7/1 <u>5/1</u> – 7/31	19.5 <u>44.5</u> %	50 (vsl/day)
		8/1 – 9/14	Closed	
		9/15 — 10/31	19.5 %	50 (vsl/day)
		11/1 <u>9/15</u> – 12/31	11 <u>30.5</u> %	50 (vsl/day)
<u>Option 3:</u> Industry proposal – align closed days for	11”	1/1 – 4/30	25%	500 (vsl/week)
		5/1 – 6/30	25%	50 (vsl/day)
		7/1 – 7/31	19.5%	50 <u>85</u> (vsl/day) (close Fri, Sat, Sun)

Black sea bass with Summer flounder.	8/1 – 9/14	Closed	
	9/15 – 10/31	19.5%	50 (vsl/day)
	11/1 – 12/31	11%	50 (vsl/day)

- Public comments: Support for both options 1 and 2. Option 3 was rendered moot in light of recommendation of re-opening all seven days for commercial summer flounder.
- RIMFC: 6-1 in support of option 1, maintaining status quo.
- Marine Fisheries: While the Division can manage either option, the Division supports status quo, consistent with the Council recommendation.
- Timing to file: N/A (no changes to be filed).

5. **2019 recreational Scup management (section 3.8.1):**

- Background: Annual review of the management program. A workshop was held on February 11th to provide stock status and to solicit proposals from industry. The 2018 projected recreational harvest for scup is expected to be well below the 2019 RHL, resulting in an ~30% liberalization for recreational scup in 2019. As a result, and in response to previously received public comment, the northern region for scup (MA-NY) requested liberalizing the Party/Charter mode for scup in 2019. Methodologies for liberalizing 2019 recreational measures in the Party/charter mode were approved by the ASMFC in February 2019. These methodologies were used to derive several options that were presented at the February 11th workshop.
- Proposal: Five options were noticed:

Option	Mode	Min. size	Season	Possession Limit (person/day)
Option 1: Status Quo	Recreational	9"	5/1 – 12/31	30 fish
	P/C	9"	5/1 – 8/31	30 fish
			9/1 – 10/31	45 fish
			11/1 – 12/31	30 fish
Special Shore	8"	5/1 – 12/31	30 fish	
Option 2	Recreational	9"	5/1 <u>1/1</u> – 12/31	30 fish
	P/C	9"	5/1 <u>1/1</u> – 8/31	30 fish
			9/1 – 10/31	45 fish
			11/1 – 12/31	30 fish
			Special Shore	8"
Option 3	Recreational	9"	5/1 – 12/31	30 fish
	P/C	9"	5/1 – 8/31	30 fish
			9/1 – 10/31	45 <u>50</u> fish
			11/1 – 12/31	30 fish

	Special Shore	8"	5/1 – 12/31	30 fish
Option 4	Recreational	9"	5/1 – 12/31	30 fish
	P/C	9"	5/1 – 8/31 <u>6/30</u>	30 <u>50</u> fish
			<u>7/1 – 8/31</u>	<u>30 fish</u>
			9/1 – 10/31	45 <u>50</u> fish
			11/1 – 12/31	30 fish
Special Shore	8"	5/1 – 12/31	30 fish	
Option 5	Recreational	9"	5/1 – 12/31	30 fish
	P/C	9"	5/1 – 8/31	30 fish
			9/1 – 10/31	45 <u>50</u> fish
			11/1 – 12/31	30 <u>50</u> fish
	Special Shore	8"	5/1 – 12/31	30 fish

- Public comments: Support for option 2, as well as a combination of options 2 and 3 combined, as follows:

Mode	Min. size	Season	Possession Limit
Recreational	9"	5/1 <u>1/1</u> – 12/31	30 fish
P/C	9"	5/1 <u>1/1</u> – 8/31	30 fish
		9/1 – 10/31	45 <u>50</u> fish
		11/1 – 12/31	30 fish
Special Shore	8"	5/1 <u>1/1</u> – 12/31	30 fish

- RIMFC: At the Council meeting the Division clarified that the combination of options 2 and 3 was a feasible option approach, per the analyses approved by ASMFC. The Council voted 7-0 in support of combining options 2 and 3 -- i.e., opening on January 1st combined with increasing the P/C possession limit from 45 to 50 fish/day in September and October.
 - Marine Fisheries: Support for options 2 and 3, combined.
 - Timing to file: Immediately.
6. **2019 commercial Scup management regarding possession limits for trawl vessels with a minimum mesh size (section 3.8.2(C)):**
- Background: This rule was published by NOAA effective January 1, 2019.
 - Proposal: Sync DEM rule with NOAA rule for FMP compliance.
 - Public comments: Support as proposed. One commenter expressed a desire to extend the June 15 date to mid-August to account for the possibility of fish availability during that time.
 - RIMFC: 7-0 in support as proposed. The Division acknowledges the public comment in support of extending the June 15 date to mid-August, however, as an FMP

compliance matter, this is not a viable option for 2019, as NOAA has already published the final rule.

- Marine Fisheries: Support adoption of the amendment as proposed.
- Timing to file: Immediately.

7. **2019 recreational Striped bass management (section 3.9.1):**

- Background: Annual review of the management program. A workshop was held on December 18th to provide stock status and to solicit proposals from industry.
- Proposal: No amendments were proposed. Current management:

Min. Size	Season	Poss. Limit (person/day)
28"	1/1 – 12/31	1 fish

- Public comments: None provided.
- RIMFC: 7-0 in support of maintaining status quo.
- Marine Fisheries: Support for status quo.
- Timing to file: N/A (no changes to be filed).

8. **2019 commercial Striped bass general category management (section 3.9.2(A)):**

- Background: Annual review of the management program. A workshop was held on December 18th to provide stock status and to solicit proposals from industry.
- Proposal: Three options were noticed:

Option	Min. Size	Season	Allocation	Poss. Limit (person/day)
Option 1: Status quo	34"	5/20 – 8/4 (closed Fri & Sat)	70%	5 fish (max 5 fish/vessel)
		8/5 – 12/31 (closed Fri & Sat)	30%	
Option 2: Industry proposal		5/20 – 8/4 12/31 (closed Fri & Sat)	70 100%	
		8/5 – 12/31 (closed Fri & Sat)	30%	
Option 3: Industry proposal		5/20 6/2 – 8/4 12/31 (closed Fri & Sat)	70 100%	
		8/5 – 12/31 (closed Fri & Sat)	30%	

- Public comments: A significant amount of comments were received, with varying support for all three options that were noticed. Comments focused on the issues of access to the fishery by all user groups, illegal fishing in federal waters that may be

affected by the RI season, and effects on price due to overlap of the RI season with Massachusetts.

- **RIMFC:** The Council deadlocked in its effort to render advice to the Director on this matter. (Three separate motions were made pertaining to each of the three options; each motion failed to pass on a 3-4 vote.) In response to public concerns regarding illegal fishing in the EEZ during August, the Council discussed a modified option that would shift the opening of the second sub-period from August 5 to July 1, but held off on considering this as a formal recommendation.
- **Marine Fisheries:** While the Division can manage any of the options, the Division recognizes the need to offer a recommendation that bridges the divide among the many split opinions offered by the public, and the Council’s inability to forge a consensus approach. Accordingly, the Division recommends that the sub-periods be amended such that the first sub-period ends on June 30, followed immediately by the start of the second sub-period on July 1. This compromise, which is within the bounds of the options presented at hearing, is aimed at addressing concerns regarding illegal fishing in the EEZ, particularly in late summer and early fall, and the effect of the RI season on the regional market. The Division’s recommendation is as follows:

Option	Min. Size	Season	Allocation	Poss. Limit (person/day)
<u>New Option</u>	34”	5/20 – 8/4 6/30 (closed Fri & Sat)	70%	5 fish (max 5 fish/vessel)
		8/5 7/1 – 12/31 (closed Fri & Sat)	30%	

- **Timing to file:** Immediately.

9. **2019 commercial striped bass floating fish trap management (section 3.9.2(B)):**

- **Background:** Annual review of the management program. A workshop was held on December 18th to provide stock status and to solicit proposals from industry.
- **Proposal:** No amendments were proposed. Current management:

Min. Size	Season	Starting Poss. Limit (lbs/vsl/day)
26”	4/1 – 12/31	Unlimited

- **Public comments:** None provided.
- **RIMFC:** 6-0 (one abstention) in support of maintaining status quo.
- **Marine Fisheries:** Support for status quo.
- **Timing to file:** N/A (no changes to be filed).

10. **2019 party/charter possession limit for Tautog (section 3.11.1(B)(7)(d)):**

- **Background:** Last year (2018), the recreational possession limit for the recreational fishery during the fall sub-period was amended from 6 to 5 fish/person/day, and the season was extended to Dec 31. These changes were intended to also apply to the

party/charter sector, but the possession limit reduction for that sector was inadvertently omitted during the final regulatory filing. This proposed amendment is intended to correct that error, and is necessary to maintain compliance with the FMP.

- Proposal: Amend the possession limit from 6 to 5 fish/person/day for the P/C sector during the fall sub-period.
- Public comments: Support to maintain at 6 fish bag limit, due to concern for an unfair disadvantage with Massachusetts, which has maintained a 1 fish/day possession limit during RI’s closed season during June and July, and has not adopted mandatory reporting requirements. The Division recognizes the inconsistencies with Massachusetts (namely the spawning season closure) and can investigate possible changes to address these inconsistencies. Any changes would need to be first approved by ASMFC.
- RIMFC: 7-0 in support as proposed.
- Marine Fisheries: Support for adoption of the amendment as proposed. It is noted that the 5 fish bag limit for RI is part of the FMP and is therefore necessary to maintain compliance at this time. The Division recognizes the inconsistencies with Massachusetts (namely, the seasonal spawning closure and reporting discrepancies). The Division is committed to investigating possible changes to address these inconsistencies, and to investigate the possibility of returning the possession limit to 6-fish during the fall sub-period via a conservation equivalency proposal to the ASMFC this year.
- Timing to file: Immediately.

11. 2019 recreational Bluefish management (section 3.18.1):

- Background: Annual review of the management program. A workshop was held on February 11th to provide stock status and to solicit proposals from industry.
- Proposal: No amendments were proposed. Current management:

Min. Size	Season	Poss. Limit (person/day)
No min. size	1/1 – 12/31	15 fish

- Public comments: None provided.
- RIMFC: 7-0 in support of maintaining status quo as proposed.
- Marine Fisheries: Support for status quo.
- Timing to file: N/A (no changes to be filed).

12. 2019 commercial Bluefish management (section 3.18.2):

- Background: Annual review of the management program. A workshop was held on February 11th to provide stock status and to solicit proposals from industry. A slight coastwide quota increase has been adopted for the 2019 fishing season, and is reflected in option 2 as a means to harvest the full state allocation. At the time of the workshop, a quota rollover from the recreational to commercial fishery had not yet been approved by NOAA. Option 3 was therefore offered as a contingency in the event the rollover was not approved, with the resulting reduction in commercial quota for 2019. This transfer has since been approved, rendering option 3 unnecessary.

- Proposal: Three options were noticed:

Option	Min. size	Sub-period	Poss. Limit
<u>Option 1:</u> Status Quo	12"	1/1 – 4/30	1,000 lbs/2 wks
		5/1 – 2 nd Sat. in Nov.	6,000 lbs/wk
		2 nd Sun. in Nov. – 12/31	500 lbs/wk
<u>Option 2:</u> Division proposal - Increase possession limit		1/1 – 4/30	1,000 lbs/2 wks
		5/1 – 2 nd Sat. in Nov.	6,000 <u>8,000</u> lbs/wk
		2 nd Sun. in Nov. – 12/31	500 lbs/wk
<u>Option 3:</u> Division “Contingency” proposal		1/1 – 4/30	1,000 <u>500</u> lbs/2 wks
		5/1 – 2 nd Sat. in Nov.	6,000 <u>1,000</u> lbs/wk
		2 nd Sun. in Nov. – 12/31	500 <u>250</u> lbs/wk

- Public comments: None provided.
- RIMFC: 7-0 in support of option 2.
- Marine Fisheries: While the Division can manage either option, the Division supports option 2, consistent with the Council recommendation.
- Timing to file: Immediately.

13. **2019 commercial Blacknose sharks (section 3.19.2):**

- Background: Proposal seeks consistency with the 2019 ASMFC specifications for coastal sharks, which prohibits possession of Blacknose sharks north of 34°N latitude in the commercial fishery.
- Proposal: Add species to list of prohibited species.
- Public comments: None provided.
- RIMFC: 7-0 in support as proposed.
- Marine Fisheries: Support for adoption of the amendment as proposed.
- Timing to file: Immediately.

14. **2019 recreational Cod management (section 3.20.1):**

- Background: Proposal seeks consistency with the 2018 federal specifications for the Georges Bank (GB) recreational Cod fishery.
- Proposal: Remove the minimum size language from rule and replace with a reference to the federal rule, so as to both maintain consistency with the federal rule, and also to avoid the need to amend the DEM rule when the federal rule is amended. The Council was presented with revised language to remove both the minimum size and possession limit language from rule and replace with a reference to the federal rules as outlined above. This revised language is consistent with the proposed amendment offered via notice.
- Public comments: Two comments in support as noticed.

- RIMFC: 7-0 in support of the revised language provided, as follows:
 - “A. Minimum size: ~~Twenty-two inches (22”)~~ *The minimum size in state waters is equal to the minimum size in federal waters, Outside Gulf of Maine (GOM) Regulated Mesh Area, as codified at 50 C.F.R. §648.89(b).*
 - B. Possession limit: ~~Ten (10) fish per person per calendar day~~ *The possession limit in state waters is equal to the possession limit in federal waters for Georges Bank (GB) Cod, as codified in 50 C.F.R. §648.89(c).*”
- Marine Fisheries: Support for adoption of the amendment, incorporating the revised wording presented to the Council. The Division will look to address other species where similar language would be appropriate.
- Timing to file: Immediately.

15. **Commercial menhaden proposal #1 (section 3.22.2(A)(2)):**

- Background: Division proposal to address the possibility of industry interest in conducting additional large-scale operations in RI as a result of the Amendment 3 quota increase and ongoing bait shortage in the lobster fishery.
- Proposal: Broaden the commercial vessel restrictions to apply to all commercial vessels, other than small-scale fisheries and floating fish traps; rule currently applies only to purse seine operations.
- Public comments: None provided.
- RIMFC: 5-2 in support as proposed.
- Marine Fisheries: Support for adoption of the amendment as proposed.
- Timing to file: Immediately.

16. **Commercial menhaden proposal #2 (proposed new section 3.22.2(A)(2)(f)):**

- Background: Industry proposal resulting from concerns over the possibility of industry interest in conducting additional large-scale operations in RI as a result of the Amendment 3 quota increase and ongoing bait shortage in the lobster fishery.
- Proposal: Restrict vessel length and useable storage capacity for commercial menhaden operations.
- Public comments: The majority of comments provided at the hearing were in support of the proposal.
- RIMFC: The Council offered no recommendation on the proposal due to concern that the proposed amendment is based on potential impacts rather than realized impacts.
- Marine Fisheries: The Division does not support the proposal at this time based on the same rationale provided by the Council as well as having no data and/or analysis to support a maximum vessel length of 80 feet. Regarding concerns over enforcing compliance with possession limits, DEM’s Division of Law Enforcement notes that portable truck scales can be mobilized to any location to weigh menhaden landings.
- Timing to file: N/A (no changes to be filed)

17. **Commercial menhaden proposal #3 (several instances in section 3.22.2(B)):**

- Background: Review of rules subsequent to adoption of Amendment 3 to the FMP for menhaden.
- Proposal: Division proposal to replace the term “landing limit” with “possession limit.”
- Public comments: None provided.
- RIMFC: 7-0 in support as proposed.
- Marine Fisheries: Support for adoption of the amendment as proposed.
- Timing to file: Immediately.

18. **Commercial menhaden proposal #4 (section 3.22.2(B)(2)):**

- Background: Industry proposal resulting from concerns over the possibility of industry interest in conducting additional large-scale operations in RI as a result of the Amendment 3 quota increase and ongoing bait shortage in the lobster fishery.
- Proposal: Provide for a possession limit trigger equaling 50% of the quota, which would impose a reduced possession limit of 80,000 lbs/vessel/day under the State Quota Program.
- Public comments: None provided.
- RIMFC: The Council offered no recommendation on the proposal due to concern that the proposed amendment is based on potential impacts rather than realized impacts, and that the proposal could impact the State’s ability to participate in the Episodic Event Set Aside Program.
- Marine Fisheries: The Division does support the proposal at this time based on the same rationale provided by the Council. The proposal would likely limit the State’s ability to participate in the Episodic Event Set Aside Program quota (≈ 4 million additional pounds) by increasing the time it takes to harvest the RI quota, as the entire commercial quota must be harvested before participation in the Episodic Event Set Aside Program can occur.
- Timing to file: N/A (no changes to be filed).

19. **Commercial menhaden proposal #5 (proposed new section 3.22.2(B)(4)):**

- Background: Division proposal to address the potential for a vessel to exceed the RI possession limit for menhaden while fishing in federal waters, and subsequently transit RI state waters and land in exceedance of the RI possession limit.
- Proposal: Division proposal to clarify the transiting rule, such that it would not pertain to the commercial menhaden fishery.
- Public comments: None provided.
- RIMFC: 7-0 in support as proposed.
- Marine Fisheries: Support for adoption of the amendment as proposed.
- Timing to file: Immediately.

20. **Commercial menhaden proposal #6 (section 3.22.2(C)(2)):**

- Background: Inaccuracy found regarding the ending date of the Episodic Event Set Aside Program.
- Proposal: Division proposal to amend the ending date of the Episodic Event Set Aside Program consistent with the ASMFC’s FMP.

- Public comments: None provided.
- RIMFC: 7-0 in support as proposed.
- Marine Fisheries: Support for adoption of the amendment as proposed.
- Timing to file: Immediately.

21. Whelk minimum size measurement (section 4.9(F)):

- Background: Division proposal to provide clarity to the rule regarding whelk minimum size measurement. This matter was brought to hearing at the request of industry due to confusion regarding accurate and consistent measurement protocols. It is recognized that whelk are uniquely shaped organisms that are difficult to measure.
- Proposal: Remove length as a component of the minimum size regulation and adopt more refined language specifying how whelk width is to be measured.
- Public comments: Majority of comments were in opposition to the amendment as proposed.
- RIMFC: The Council offered no official recommendation on the proposal due to concern raised during public comments that the proposed amendment does not provide sufficient clarity to the rule as intended. The Council recommended that the Division continue to work with industry to develop clarified language and/or develop a gauge.
- Marine Fisheries: On the basis of concerns raised by the public and the Council, the Division recommends not moving forward with this proposed amendment at this time. The Division recommends that collaborative efforts involving industry and the Division of Law Enforcement should continue, with a view to further improving the regulatory standard for measuring minimum size. On the basis of those efforts, the Division proposed to bring this matter back to hearing before the end of 2019.
- Timing to file: N/A (no changes to be filed).

22. Whelk pot tagging program (proposed new section 4.18):

- Background: A whelk pot tagging program was originally considered in 2012 when the commercial limit of 300 pots was adopted. At that time the Council recommended that a tagging program be considered to address pot limit compliance. This matter was recently raised again by industry due to concerns that pot limit exceedance may be an on-going problem.
- Proposal: Establish a commercial whelk pot tagging program.
- Public comments: Majority of comments were in opposition to the proposal.
- RIMFC: 6-1 in support as proposed. When prompted for guidance on gear rotation replacement tags and catastrophic loss tags, the Council recommended 7-0 to include provisions for both tag types in the final rule.
- Marine Fisheries: Support for adoption of the new program as proposed, including the Council's recommendation to incorporate provisions for gear replacement tags and catastrophic loss tags in the final rule.
- Timing to file: The Division needs to submit a regulatory analysis with the Office of Regulatory Reform prior to finalizing and filing this rule.

23. Lobster trap tags – replacement of original tags ordered but not received and presumed to be lost (section 5.8.1(R)(11) (c)):

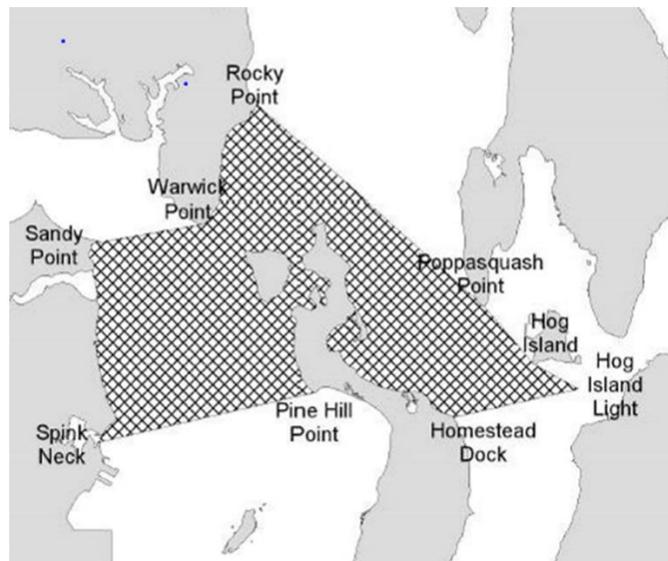
- Background: Division proposal to provide for replacement tags in the event the shipment of original tags ordered was not received. If a shipment of original tags ordered is not received (e.g., stolen or lost in the mail), there needs to be a provision to address their replacement. Original tags not received cannot be replaced with new original tags; those tags must be rendered null and void to prevent a possible compliance problem should the original order be found.
- Proposal: Provide for the use of catastrophic tags to replace original tags lost or stolen.
- Public comments: None provided.
- RIMFC: 7-0 in support as proposed.
- Marine Fisheries: Support for the amendment as proposed.
- Timing to file: Immediately.

24. Clarification of open and closed periods of the Upper Narragansett Bay Trawling Area to trawling (section 6.8.2(C)(1)):

- Background: Lack of clarity regarding timeframes when area is open to harvest.
- Proposal: Amend rule to clarify timeframes when area is open to harvest.
- Public comments: None provided.
- RIMFC: 7-0 in support as proposed.
- Marine Fisheries: Support adoption of amendment as proposed.
- Timing to file: Immediately.

25. Clarification of area description of the Upper Narragansett Bay Trawling Area (section 6.8.2(C)(1)(a)):

- Background: Inaccuracy regarding the area boundary description.
- Proposal: Amend rule to correct this inaccuracy.
- Public comments: One member of the public noted that the additional area proposed to be included in this management area is not accurate as the area is not generally accessible to trawling vessels.
- RIMFC: The Division provided the Council with alternate language that would align the written description of the area with the map of the area as shown in the Division's repealed regulation "*Part XVII – Maps.*" This area, as shown on the map, is depicted as follows:



The alternate language provided to the Council is as follows:

“Prohibited areas: In addition to those waters where all netting is prohibited, a trawling device is prohibited in the following areas: ~~In the Upper Narragansett Bay Trawling Area on any Saturday, Sunday, or legal State holiday between July 1st and November 1st annually.~~ The Upper Narragansett Bay Trawling Area is designated a Marine Life Management Area pursuant to R.I. Gen. Laws § 20-3-4, and is described as the follows: ~~the southern boundary extends~~ waters north of a line extending from Spink Neck in the Town of North Kingstown to Pine Hill Point on Prudence Island; ~~thence and~~ from Homestead Dock on the easterly shore of Prudence Island; ~~thence northeasterly to the~~ Hog Island Shoal Light; ~~and thence to the north abutment of the Mt. Hope Bridge in the Town of Bristol;~~ the western and south of a line extending boundary extends from Sandy Point in the City of Warwick to the southern tip of Warwick Point in the city of Warwick; ~~the northern boundary extends from and from~~ the dock at Rocky Point in the city of Warwick to the southern tip of Poppasquash Point in Bristol; ~~thence to Hog Island Shoal Light, and thence to the northern abutment of the Mt. Hope Bridge in~~ the town of Bristol.”

At the Council meeting, it was suggested that lat/long coordinates should be used to describe the area – either in lieu of or in addition to geographic landmarks -- due to possible inaccuracies regarding the names and status of these landmarks. It was specifically noted that there is an “old” and “new” Homestead Dock that differ in location, and that the Rocky Point location is also unclear. The Council therefore recommended that the landmark names and accuracy of locations be further investigated via subsequent rule-making. Notwithstanding, the Council voted 7-0 to recommend adoption of the language presented by the Division, as an interim measure.

- **Marine Fisheries:** Due to further analysis of the intent of the rule, and consistent with the public comment received, the Division recommends adoption of the revised language provided above to better align the description with the area with the (repealed) map of the area. The Division notes the inaccuracy that may remain with respect to Homestead Dock and will investigate the names and locations of all such

- landmarks as used in regulation, and prepare amended rules for a future public hearing upon conclusion of a review and field reconnaissance of these landmarks.
- Timing to file: Immediately.

26. **Extension of gill net tag valid dates:**

- Background: Division proposal to amend the valid dates so as to not require new tags beginning January 1, 2020.
- Proposal: Proposed extension of the gill net tag valid dates one additional year to January 1, 2021.
- Public comments: None provided.
- RIMFC: 7-0 in support as proposed.
- Marine Fisheries: Support for the amendment as proposed.
- Timing to file: Immediately.



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

INTER-OFFICE MEMO
(ADDENDUM to memo dated April 8, 2019)

TO: Janet Coit, Director

FROM: Jason McNamee, Chief

DATE: June 11, 2019

SUBJECT: Update regarding proposed regulatory amendments for Part 4 – Shellfish, regarding the proposal to establish rules for a whelk pot tagging program.

At this time the Division has not filed any amendments to *Part 4 – Shellfish* regarding establishment of rules for a whelk pot tagging program resulting from the public hearing that took place on March 11, 2019. While recommended by the Council and directed by you to move forward with the filing and adoption of rules, upon further consideration the Division now recommends holding off with filing until we can obtain additional public input regarding certain aspects of the program that remain unsettled; namely that of routine gear loss tags, gear rotation tags, and valid dates of tags. As originally intended, this program remains planned for implementation in 2020, so the Division sees no downside to withdrawing this noticed amendment at this time and re-noticing for a planned hearing in November. In the interim the Division will hold a workshop to solicit additional feedback on operational details of the program, and also look to develop the necessary administrative components of the program so that implementation can occur in 2020 as planned.