



Rhode Island  
Department of Environmental Management

DIVISION OF FISH AND WILDLIFE

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TO: Janet Coit, Director

FROM: Mark Gibson, Deputy Chief

DATE: May 2, 2014

SUBJECT: Final Decisions Pertaining to March 25, 2014 Marine Fisheries Public Hearing Items:

General Editing  
Recreational Summer Flounder  
Recreational Winter Flounder  
Recreational Tautog  
Commercial Tautog  
Recreational Scup  
Recreational Black Sea Bass  
Coastal Sharks  
Recreational Striped Bass  
Commercial Striped Bass  
Bristol Harbor Shellfish Management Area  
Commercial and Recreational Conch  
Commercial Fishing Prohibition – Artificial Reef Sites  
Commercial Menhaden

Proposed regulatory changes have moved through the regulatory review process and are hereby presented for final decision.

The items summarized and set forth herein were the subject of a public hearing held on March 25, 2014 and subsequent consideration by the RI Marine Fisheries Council at their April 7, 2014 meeting. Supporting documentation submitted along with this memorandum include: the public hearing summary document; the summary of public hearing comments; the April 7, 2014 Council meeting minutes; and the applicable advisory panel meeting minutes.

*Having reviewed the entire record, conferred with staff, and conferred with you, I hereby set forth the proposed changes. If you concur, please indicate by signing this memo at the end and returning it to me. Upon receipt of the signed memo, I will initiate the filing process.*

## 1. General Editing Amendments to Parts III, IV, VII, XI, XII, and XVI

The proposed amendments to these six parts – set forth in the public hearing document as public hearing items 8, 12, 15, 16, 17, 19, and 21 -- all involve **general editing**, including the removal of duplicative language, the correction of statutory citations, and other general formatting issues. The changes are part of the Division's continuing efforts to **streamline and improve the clarity of the marine fisheries regulations**. The amendments involve no substantive changes to regulation or management. The amendments will result in a total decrease of some 28 pages of regulations. There was no AP meeting held on these general editing amendments, and no public comments offered on any of the proposals at public hearing. At the RIMFC meeting, the Division recommended adoption of the proposed amendments. The Council concurred and recommended adoption, as proposed.

*Consistent with the Council's recommendation, the Division recommends adoption of the proposed amendments.*

## 2. Recreational Summer Flounder (Part VII)

A. General Fishery Regulations for 2014. In March 2014, the ASMFC approved RI's request to de-couple with MA under the Commission's new regional approach for recreational fluke management, and to remain at status quo. Thus, the only viable option available to RI for the 2014 season is to **remain at status quo**. The status quo approach was supported by the Summer Flounder AP and at public hearing. At the RIMFC meeting, the Division recommended remaining at status quo. The Council concurred.

*Consistent with the Council's recommendation, the Division recommends remaining at status quo.*

B. "Fish for the Future" Proposal. This proposal was introduced for consideration by members of the RI for-hire industry. It would continue a pilot program that began in 2013 using fluke acquired via research set aside. For 2014, the group proposed continuing the program using a 2% allocation from RI's recreational harvest limit. The provisions of the program are outlined in an 18-page proposal that was presented to the Summer Flounder AP, noticed for public hearing, and considered by the Council. The AP recommended forwarding the proposal to the Council for further discussion. At the Council meeting, the Division noted that since RI is obligated to remain at status quo for 2014, there is no apparent opportunity to proceed with the proposal for this year' moreover, the proposal was introduced to the ASMFC, but did not receive ASMFC approval. Against that backdrop, the Council reviewed the proposal, generally found that it had merit, and recommended that the Director authorize the Division to work with the project proponents to **further develop the program with a view to potential adoption in 2015**.

*Consistent with the Council's recommendation, the Division is prepared to work with the RI for-hire industry, and the RI recreational fishery, to further explore the feasibility of this innovative approach to fluke management. We concur with the Council that the proposal has merit, but we note that there are several important policy issues that need to be pursued, including approval of the program by ASMFC, before the Department can consider its adoption. In the meantime, the Division recommends moving forward in support of further program development, per the advice of the Council.*

### 3. Recreational Winter Flounder (Part VII)

The proposed amendment significantly expands the recreational season for winter flounder. Currently, the season is open for one month in the spring, and one month in the fall. The proposed change **extends the season to ten (10) consecutive months, from March 1 to December 31, annually**, while retaining the 2-fish/person/day possession limit. The proposal stems from recent action by the ASMFC, authorizing states to enact a March – December season, while retaining the 2-fish creel limit. The purpose of the change is to increase recreational fishing opportunities in the southern range of the species.

The Winter Flounder AP supported the proposed change. It was also supported at the public hearing. At the Council meeting, the Division recommended adoption of the proposed amendment. The Council concurred and recommended adoption, as proposed.

*Consistent with the Council's recommendation, the Division recommends adoption of the proposed amendment.*

### 4. Recreational Tautog (Part VII)

The proposed amendment pushes ahead the opening of the spring season from April 15 to April 1. The proposal emanated from, and was supported by, the Tautog AP. It was also supported at public hearing. At the Council meeting, the Division acknowledged that the proposal would be particularly beneficial to shore-based fishermen, and the local bait-and-tackle shops that support such activities, and that two weeks of additional fishing opportunity in the early spring, when catch rates are relatively low, would probably have only a modest impact on fishing mortality. However, the Division noted that a cautionary approach may be in order, since a benchmark stock assessment is currently being conducted on tautog through the ASMFC. Depending on the results of the assessment, there may be a need to tighten RI's regulations next year. The Division and the Council acknowledged that enacting an April 1 start date is a catch-22, since recreational fishing measures are typically considered and decided upon each April. In consideration thereof, and with a view to supporting shore-based fishing interests, the Council recommended adoption of the April 1 start date, effective in 2015, with the understanding that if the stock assessment results in the need to reduce fishing mortality, the matter can be reconsidered.

*The Division recommends **remaining at status quo**. Liberalization of the recreational fishing regulations for tautog – even at relatively modest levels – is ill-timed given the pending stock assessment. If the results of the assessment allow for liberalization, the proposed April 1 start date can and should be reconsidered, with a view to adoption. On the other hand, if the results of the assessment compel a more conservative approach, the reductions in 2015 should apply to the current regulations. The Council's recommendation would be workable -- if an April 1 start date could be enacted now and repealed prior to next April. But in view of the timing of the regulatory process for 2015, that recommendation is not workable.*

## 5. Commercial Tautog (Part VII)

The only option noticed for public hearing was to remain at status quo. The AP supported status quo, and also recommended the following amendment: for any overage that occurs during any sub-period, the reduction should be applied to the summer sub-period the following year. One comment was offered at the public hearing: a recommendation to increase the possession limit to 40 fish/vessel/day. At the Council meeting, the Division recommended remaining at status quo, while supporting the proposed change to the process for addressing any sub-period overages. The Division noted that an increase in the possession limit would result in earlier season closures. The Council recommended remaining at status quo, and adopting the proposed change to the process for addressing any sub-period overages.

*Consistent with the Council's recommendation, the Division recommends **remaining at status quo, and amending the process for addressing any sub-period overages by applying reductions to the summer sub-period the following year.***

## 6. Recreational Scup (Part VII)

The only option noticed for public hearing was to remain at status quo. The AP supported status quo for the general fishery, and also supported expanding the special shore-mode program, which currently provides for a reduced minimum size of 9 inches at three specific shore sites. The AP recommended adding three or more additional sites, with consideration given to: the West Wall in Narragansett, Fort Wetherill in Jamestown, Fort Adams in Newport, and another site in the upper Bay. There were no comments offered at the public hearing. At the Council meeting, the Division recommended remaining at status quo. The Division also supported the proposal to expand the number of sites under the special shore-mode program. The Council concurred, and advised DEM Marine Fisheries and DEM Enforcement to coordinate on finalizing the new sites to be added to the program, with the understanding that the sites should not be in close proximity to any public boat ramps.

*Consistent with the Council's recommendation, the Division recommends **remaining at status quo for the general fishery and adding the following five new sites to the special shore-mode program, at which the minimum size for scup will be 9 inches: the West and East Walls in Narragansett, Fort Wetherill in Jamestown, Fort Adams in Newport, and Rocky Point in Warwick.** The Division notes that the expanded program may need ASMFC approval prior to final implementation.*

## 7. Recreational Black Sea Bass (Part VII)

The proposed amendment delays the opening of the fishery in June by 14 days to comply with the 7% harvest reduction required by the ASMFC for 2014; the reduction is in response to the exceedance of the coastwide recreational harvest limit in 2013. Three options were developed for consideration. The AP supported a later start date to the season in June rather than an earlier fall closure. There were no comments offered at the public hearing. The Council recommended adoption of option 1, which would **shift the start date from June 15 to June 29.**

*Consistent with the Council's recommendation, the Division recommends adoption of the June 29 start date for the start of the season.*

## 8. Coastal Sharks (Part VII)

The proposed amendments involve **technical changes to the commercial species groupings** for coastal sharks and an **increase in the recreational minimum size for hammerhead sharks**. The first changes are ASMFC compliance issues, the second is an allowance per a recent revision to the ASMFC's FMP. There was no AP meeting held on the issue, and no comments offered at the public hearing. At the Council meeting, the Division recommended adoption of the proposed amendments. The Council concurred and recommended adoption, as proposed.

*Consistent with the Council's recommendation, the Division recommends adoption of the proposed amendments.*

## 9. Recreational Striped Bass (Part XII)

The only option noticed for public hearing was status quo. The AP supported remaining at status quo. There were no comments offered at the public hearing. At the Council meeting, the Division supported remaining at **status quo**, and the Council concurred.

*Consistent with the Council's recommendation, the Division recommends remaining at status quo.*

## 10. Commercial Striped Bass (Part XII)

A. *General Category*. The proposed amendment **shifts the opening day of the summer season from June 6 to June 8**, so the fishery opens on a Sunday this year. The AP supported the proposed change. It was also supported at the public hearing. At the Council meeting, the Division recommended adoption of the proposed amendment. The Council concurred and recommended adoption, as proposed.

*Consistent with the Council's recommendation, the Division recommends adoption of the proposed amendment.*

B. *Floating Fish Traps*. One proposed amendment **adds a roll-over provision**, authorizing the Division to roll-over any unused allocation from the floating fish trap fishery to the general category fishery if the Division estimates that the floating fish trap fishery will not fully utilize its allocation by October 15 annually. The other proposed amendment **reduces the season from Jan-Dec to April-Dec.**, to accommodate state reporting requirements to the ASMFC. The AP supported both of the proposed changes. They were also supported at the public hearing. At the Council meeting, the Division recommended adoption of both proposed amendments. The Council concurred and recommended adoption, as proposed.

*Consistent with the Council's recommendation, the Division recommends adoption of the two proposed amendments.*

## **11. Bristol Harbor Shellfish Management Area** (Part IV)

The proposed amendments **correct two technical errors** pertaining to the delineation of the Bristol Harbor Shellfish Management Area. There were no comments offered at the public hearing. At the Council meeting, the Division recommended adoption of the proposed amendments. The Council concurred and recommended adoption, as proposed.

*Consistent with the Council's recommendation, the Division recommends adoption of the proposed amendments.*

## **12. Commercial and Recreational Conch** (Part IV)

The proposed amendments to the conch regulations are multi-faceted. As a package, they constitute a significant step forward in the evolving management program for this important fishery. The amendments stem from the Division's collaborative work with the Council's Ad Hoc Whelk Committee. The Council addressed the issues individually, by category, viz.:

Minimum Size. The current minimum size (commercial and recreational) is 2 ¾" width and 4 ¾" length. Those minimum sizes were enacted in 2012. Prior to 2012, the minimum sizes were 2 ½" width and 4 ½" length. There is increasing evidence that conch reach sexual maturity well above the current minimum sizes. The public hearing notice set forth two options for increasing the minimum sizes: two ¼" annual increases over two years (option 1); and four 1/8" annual increases over four years (option 2).

Following a healthy discussion on the issue, the Ad Hoc Whelk Committee rendered a split opinion, with six members favoring a single 1/8" increase in 2014, and five members favoring no change (status quo). All members supported continued study of the issue.

At the public hearing, four comments were offered: two in support of a single 1/8" increase in 2014, followed by continued study of the issue; and one in support of four 1/8" annual increases (shell length only) beginning in 2015. Comments from URI's Department of Fisheries, Animal and Veterinary Sciences and from the RI Whelk Fishermen's Association both focused on the need to move forward with collaborative research to better inform the management process.

At the Council meeting, the Division urged adoption of option 1, noting that a 1" overall increase in size may be needed to protect female channeled whelk prior to reaching sexual maturity, and that ¼" increases should be enacted to achieve, or approach, that goal in a timely fashion.

Following a healthy discussion on the issue, the Council recommended adoption of a single 1/8" increase in 2014. The Council further recommended that this increase only pertain to channeled whelk (not knobbed whelk as well).

*Per the Director's final review of this matter, the Division confirms the Director's decision to enact a 1/8" increase in width in 2014 (2 7/8" minimum width, with corresponding minimum length of 5 1/8") and an additional 1/8" increase in width in 2015 (3" minimum width, with corresponding minimum length of and 5 3/8" length). These increases will apply to both*

*channeled and knobbed whelk, and to both the commercial and recreational fisheries. The decision is based primarily on the following factors:*

- *Consistency with Massachusetts.*
- *The need for meaningful action to protect the resource in view of new information pertaining to size at maturity.*
- *The recognition that larger increases in size, enacted over a relatively short time period, would be too disruptive to the industry. The goal is to strike a balance between moving forward with sound resource protection and maintaining a sustainable fishery.*
- *The need for more information to establish appropriate minimum sizes for channeled and knobbed whelk, coupled with the challenge of enacting separate minimum size regulations for the two species that differ by only a fraction of an inch.*
- *The recognition that the Division, URI, and the whelk industry are about to embark on an important collaborative project, which will bolster our understanding of the resource and the fishery, including its interactions with other shellfish fisheries, and inform future management decisions. The action being taken now is measured and modest, and intended to provide flexibility for future adjustments, as needed, based on the information and knowledge developed via the project.*

*The Division is aware of, and will respond to, the challenge of establishing a standardized means of measuring size for use by industry and Enforcement.*

Season. The current season (commercial and recreational) is year-round. Two alternative approaches were noticed for consideration: an 8-month season (May – Jan); and a 10-month season, split into Jan – July and Oct-Nov (with a spawning closure during Aug and Sept). The Whelk Committee recommended status quo. There were three comments offered at public hearing, all supporting status quo pending the outcome of further research. At the Council meeting, the Division recommended status quo, noting that the Division was mainly focused on increasing minimum size and agreed that other potential management measures, such as seasonal closures, could await the outcome of further study. The Council concurred and recommended remaining at **status quo**.

*Consistent with the Council's recommendation, the Division recommends remaining at status quo.*

Fishery Closure Due to Imminent Risk to Public Health. The proposed amendment would authorize DEM to close state waters upon a determination that there is a public health associated with the consumption of conchs exposed to biotoxins. The proposal stems from a December 2013 Environmental Assessment conducted by NOAA Fisheries that was prepared for an action that would amend existing paralytic shellfish poisoning (PSP) closed areas to also include a prohibition on gastropod possession and harvesting. At the Council meeting, the matter was discussed but tabled because the Council wanted a better understanding as to how the provision would be enacted by DEM's Office of Water Resources. In the meantime, the Council and Division both recognized that the Director has existing authority to enact a closure in response to a finding of imminent peril to public health.

*Consistent with the Council's recommendation, the Division recommends **postponing action** on this item pending further review and discussion with DEM's Office of Water Resources at the next meeting of the Council.*

General Provisions for Conch Pots. These proposed amendments involve three revisions to existing provisions pertaining to **1) the unauthorized hauling of pots; 2) the unauthorized possession and/or transfer of pots, and 3) hauling or setting pots at night.** The provisions already exist as regulations in generic form; the proposed amendments would apply them to conch pots. The Whelk Committee supported all of the proposed changes. There were no comments offered at public hearing. At the Council meeting, the Division recommended adoption, as proposed. The Council concurred, and recommended adoption, as proposed.

*Consistent with the Council's recommendation, the Division recommends adoption of the proposed amendments.*

Commercial Possession Limit. The current limit is 35 bushels/vessel/day. Two alternative approaches were noticed for consideration: a 17 bushel limit and a 14 bushel limit. The Whelk Committee recommended status quo. There were four comments offered at public hearing, all supporting status quo, pending the outcome of further research. At the Council meeting, the Division recommended status quo, noting that the Division was mainly focused on increasing minimum size and agreed that other potential management measures, such as reduced possession limits, could await the outcome of further study. The Council concurred and recommended remaining at **status quo.**

*Consistent with the Council's recommendation, the Division recommends remaining at status quo.*

Annual Catch Limit. There is currently no annual catch limit. A proposed annual catch limit, to be set by the Division, was noticed for consideration. The Whelk Committee recommended status quo. The comments offered at hearing were in support of status quo. At the Council meeting, the Division noted that while limiting catch is the most appropriate and effective means for managing the resource, the Division is not yet ready to recommend adoption of a quota management program for the fishery. The Division therefore recommended remaining at status quo. The Council concurred and recommended remaining at **status quo.**

*Consistent with the Council's recommendation, the Division recommends remaining at status quo.*

### **13. Commercial Fishing Prohibition – Artificial Reef Sites (Part XI)**

The proposed amendment would ban commercial fishing in areas designated as experimental reef locations in the Narragansett Bay Marine Life Management Area. The Division is planning to move forward with the establishment of three experimental reef sites in the Bay, using federal Sport Fish Restoration funding. The proposal is aimed at protecting the sites from gear impacts and complying with the terms of the federal funding. There was no AP meeting held on the issue. There were two comments offered at public hearing, both in support of the proposal. At the Council meeting, the Division recommended adoption of the proposal. The Council concurred, but stipulated that the prohibition should sunset upon completion of the study.



*Pending further review and clarification of the activities and/or gear subject to the prohibition, and the time frame for the prohibition, the Division recommends **postponing final action** on this proposal.*

#### **14. Commercial Menhaden** (Part XVI)

A. New Possession Limit During Closure of Narragansett Bay Management Area. The proposed amendment **establishes a new 6,000 pound/vessel/day possession limit in the NB Management Area when the area is closed.** Currently, the possession limit is zero when the area is closed. The impetus for the proposal is to allow the following activities to continue when the area is closed to large-scale commercial harvesting:

- Small-scale commercial harvesting, subject to the 6,000 lb./day limit. (If/when the State's menhaden quota is filled, such harvesting will be limited to non-directed fisheries only, which, per the additional regulatory change set forth below under B, will include use of cast nets.)
- The possession of menhaden as bait, e.g., by commercial striped bass fishermen, subject to the 6,000 lb./day limit.

It should be noted that, per current regulation, there is a zero possession limit for menhaden in the area, applicable to all commercial fishermen, on week-ends and holidays, and at night. So the new 6,000 lb. possession limit applies only during the week and during daylight hours (unless the weekday falls on a holiday).

Additionally, the 6,000 lb. limit is superseded by a 200 fish/vessel/day limit in the Providence River and Greenwich Bay.

The proposal emanated from and was supported by the AP. Three comments were offered at the public hearing, all in support of the proposal. At the Council meeting, the Division recommended adoption of the proposed amendment. The Council concurred, and recommended adoption, as proposed.

*Consistent with the Council's recommendation, the Division recommends adoption of the proposed amendments.*

B. New Definition for Non-Directed Fisheries. Pursuant to the ASMFC's Menhaden FMP, once a State's menhaden quota is filled, landings of menhaden taken via non-directed fisheries may continue, under the category of bycatch, subject to a 6,000 pound/vessel/day limit. The FMP was recently amended to specify that **non-directed fisheries include fish traps and cast-netting.** The proposed amendment codifies those definitions, making it clear that menhaden taken via fish trap and cast nets may continue to be landed in RI, up to the 6,000 lb. limit, after the State's quota is filled and landings taken via directed fisheries are prohibited.

The AP did not offer a recommendation on this issue. Three comments were offered at the public hearing, all in support of the proposal. At the Council meeting, the Division recommended adoption of the proposed amendment. The Council concurred, and recommended adoption, as proposed.

*Consistent with the Council's recommendation, the Division recommends adoption of the proposed amendments.*

C. New Closure Date for Episodic Set Aside Program. The ASMFC recently amended their Menhaden FMP to require that if one or more states opt into the Episodic Event Set Aside Program, **states may harvest and land menhaden, pursuant to the terms of the program, until the set aside is fully harvested, or until November 1, whichever comes first.** (If there is any unused set aside remaining after November 1, the pounds are redistributed to the states.) The proposed amendment codifies this new provision.

The AP did not offer a recommendation on this issue. One comment was offered at the public hearing, in support of the proposal. At the Council meeting, the Division recommended adoption of the proposed amendment. The Council concurred, and recommended adoption, as proposed.

*Consistent with the Council's recommendation, the Division recommends adoption of the proposed amendments.*

D. Other Issues Raised at Public Hearing.

***Use of Cast Nets in Closed Areas.*** One individual proposed opening the currently closed areas of the Providence River and Greenwich Bay to commercial fishing using a cast net, perhaps via the issuance of a special-use permit. The existing prohibition on fishing in the two closed areas only pertains to purse seining; so cast net fishing is allowed. However, the regulations also impose a 200 fish/vessel/day limit on the taking of menhaden from the two areas "by any fishing method." So, commercial cast netting activities are subject to the 200 fish/vessel/day limit. The proposal to expand commercial cast netting in the closed areas was not subject to review by the AP, and was not taken up by the Council. *The Division recommends revisiting the proposal next year.*

***Increasing the Biomass "Floor."*** Save The Bay (STB) offered a proposal to recalculate the biomass "floor" for menhaden for the purpose of achieving a restored, robust population that will benefit commercial and recreational fishermen, wildlife, water quality, and the general public. STB feels that the current biomass floor of 1.5 million pounds is insufficient, and recommends consideration of a much higher level, e.g., 20 million pounds.

STB originally introduced a different proposal – a ban on the use of purse seines to harvest menhaden in all RI waters – and brought that before the AP. The AP did not support the proposal. The revised approach – to increase the biomass floor – was introduced at hearing and brought before the Council. At the Council meeting, the Division held that more information and analysis are needed before the Division can consider or recommend such a change. The Council offered no recommendation on the issue.

The Division notes that the current biomass threshold -- 1.5 million pounds for notice and 2.0 million pounds to begin commercial purse seining -- is coupled with a provision to terminate fishing once 50% of the exploitable biomass has been harvested. These thresholds and limits are not required under the ASMFC's FMP but were proactively developed by the Department in recognition of the important ecological services provided by menhaden. The specific values have a limited scientific basis, namely, a prototype biomass dynamic model of menhaden in

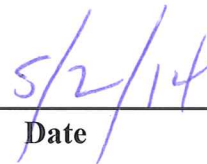
Narragansett Bay that incorporates a striped bass predation term. Many assumptions are needed to parameterize the model, not the least of which is an estimate of striped bass abundance in the Bay. The Division has no new information at this time to evaluate changes to the thresholds and limits, but the Division is interested in, and open to, the development of such information. Additionally, the ASMFC is currently conducting a new benchmark menhaden stock assessment, with final results expected later this year. The Division anticipates that the new assessment will clarify menhaden stock status vis-à-vis biological reference points and inform management. The Division is also actively engaged in the ongoing efforts by the ASMFC to further develop the Multiple Objective Decision Analysis (MODA) for menhaden. This unique and important approach will enable explicit consideration of competing objectives for menhaden management and, in an optimization framework, provide scientific advice on menhaden management policy, both coastwide and locally. Such advice may include the establishment of ecosystem reference points, which the Division could draw upon to assess potential changes to the thresholds and limits set forth by the Narragansett Bay management program. The Division looks forward to working with STB, the RI Marine Fisheries Council, and other RI interests, in advancing this important issue. *Until then, the Division recommends remaining at status quo with regard to the current biomass thresholds and limits.*



**Approved for filing as presented**



**Janet L. Coit, Director**



**Date**