



Rhode Island
Department of Environmental Management

DIVISION OF FISH AND WILDLIFE

3 Fort Wetherill Rd
Jamestown, RI 02835

401 423-1920
FAX 401 423-1925
TDD 401 831-5508

TO: W. Michael Sullivan, Director, DEM
FROM: Robert Ballou, Acting Chief, DFW
DATE: August 19, 2010
SUBJECT: Request for Decision on July 29, 2010 Marine Fisheries Public Hearing Items

Proposed changes pertaining to two marine fisheries regulatory issues have moved through the review process and are hereby presented for final decision.

The following items were the subject of a public hearing held on July 29, 2010, and subsequent consideration by the RI Marine Fisheries Council at a meeting held that same evening. Supporting documentation submitted along with this memo include a *Regional Tautog Fishery Issue Paper*, dated May 2010, which was prepared by the Division and presented to the RIMFC tautog advisory panel; the minutes of the July 22, 2010 RIMFC tautog advisory panel meeting; the public hearing summary document; a summary of public hearing comments; and the minutes from the RIMFC July 29, 2010 meeting.

The proposed changes are summarized below, and detailed in the attached annotated regulatory document.

Having reviewed the entire record, and conferred with staff, I hereby urge adoption of the proposed changes. If you concur, please indicate by affirming each section of this memo and returning it to me. Upon receipt of the affirmed memo, I will initiate the filing process. If you wish to make any changes that differ from those proposed, please delineate those changes as amendments to this memo.

Proposal to amend the Recreational Black Sea Bass Management Plan: One proposal was brought forward for public comment: a proposed extension of the season for the black sea bass recreational fishery from May 22 – September 12 to May 22 – October 11, and the enactment of a second season from November 1 – December 31.

The extended seasons, applicable to all states, were adopted in May of this year by the ASMFC's Summer Flounder, Scup and Black Sea Bass Management Board. The extensions were prompted by final 2009 harvest estimates for the recreational fishery, which became available at the end of April. The estimates indicate that the 2009 harvest was less than previously projected, and thus require only a 21.4% reduction in recreational harvest for the 2010 recreational season, rather than the 44% reduction that had been previously projected. Under the original 44% reduction projection, the ASMFC had required states to enact a 2010 season running from May 22 – September 12, and DEM followed suit by adopting that season for Rhode Island. The new

estimates, and the follow-up action by the Board, enable Rhode Island to extend the (initial) season to October 11, and to establish a second season from November 1 to December 31. The extended seasons are anticipated to achieve a 26% reduction in recreational harvest, thereby allowing for a reasonable conservation buffer to account for uncertainty in the harvest estimates and the effectiveness of regulations. Additionally, the second season will allow for increased access by party/charter boats and private boat/shore-based anglers that did not have a late fall/early winter season last year.

The proposal to extend the season(s) was unanimously supported at hearing and by the Council. I urge adoption of the recommendation.

Affirmed as recommended: W. Michael Sullivan 8/20/10

Proposal to amend the Recreational Tautog Management Plan: Three proposals were brought forward for public comment: 1) a Division proposal to reduce the bag limit from 8 fish to 3 fish during the fall sub-period; 2) an industry proposal to establish a year-long fishery, with a reduced 3-fish bag limit; 3) an industry proposal to establish a split mode for the party and charter boat sector; and 4) an option to remain at status quo – i.e., 3-fish bag limit from 4/15 – 5/31; closed fishery from 6/1 – 6/30; 3-fish bag limit from 7/1 – 3rd Friday in October; and 8-fish bag limit from 3rd Saturday in October – 12/15.

Background

As reflected in the *Regional Tautog Fishery Issue Paper* (May 2010), which was prepared by the Division and served as the basis for the regulatory proposal:

- Tautog, while recognized biologically as a single coast wide stock, do not undergo large scale migrations; rather they generally stay within range of state waters throughout the year. In recognition of this life history trait, RI and MA have the ability, per ASMFC authorization, to perform a regional stock assessment for tautog and frame their state management programs on the basis of that assessment.
- The regional assessment is re-run at the beginning of each year. RI (and MA) is obliged to adjust our respective state regulations if changes in regional stock status warrant such adjustment.
- The most recent regional assessment update indicates that the regional MA/RI stock complex has been subject to overfishing over the past 2 years (see Figure 1 in the *Issue Paper*), and that the spawning stock biomass level has not increased significantly (see Figure 2) and remains in an overfished state. Locally, tautog abundance is below the long-term average (Figure 2 and Figure 4). Fishery landings are attributed almost entirely to the recreational fishery (Figure 3). The current lack of rebuilding suggests that increasing tautog biomass to former levels may not be possible at the current fishing mortality rate. The current terminal year F according to the regional assessment is $F_{2008}=0.36$ relative to the F target of $F=0.2$, meaning that a 45% reduction in F is needed to meet the target. An alternative hypothesis is that large portions of the catch are not being accounted for (missed by MRFFS, black market, sold directly to restaurants, etc). This possibility is of particular concern since the assessment model assumes input of complete catch information.
- The local RI biomass dynamic model (BDM), configured and run by the Division, also indicates poor stock biomass levels (see Figure 4) and high fishing mortality rates (see Figure 5), specifically in RI. While some of our state fishery-independent indices appear to be either

stable or increasing, the trends have not been adequate to compensate for the increasing catch rates over the past few years.

- In response to deteriorating stock conditions, DEM closed the RI recreational fishery during the month of June (action taken in 2006) and decreased the recreational bag limit in the fall from 10 to 8 fish per-person/per-day (action taken in 2008). Despite these restrictions, the Narragansett Bay juvenile finfish seine survey is indicating a decreasing trend for the most recent years of juvenile tautog estimates (Figure 6). Also, recreational catch rates in RI remain high and continue to trend upwards during the fall recreational fishery, and are 50 to 70 percent higher than the landings occurring in the MA fall recreational fishery. This difference is likely due to the lower bag limit -- 3 fish per-person/per-day, throughout the year -- in MA, which are likely enticing MA fishers to cross over into RI waters to avail themselves of RI's higher bag limit.
- Recreational landings in the RI tautog fishery are continuing to increase despite the implementation of regulations aimed at controlling fishing mortality. The high landings, particularly the high spikes in the fall fishery, are keeping the stock in an overfished state, and negating its ability to rebuild. Because RI has joined with MA to assess and manage the stock on a regional basis, it is important to take the steps necessary to rebuild and protect this "homegrown" resource and fishery.

2010 Management Considerations

In February and March of this year, a public hearing was held, and the RIMFC met, to consider proposed changes to the recreational tautog fishery for 2010. The tautog advisory panel recommended remaining at status quo for 2010, and that was the only proposal brought forward for public comment... At the public hearing there was only one comment made and that was in support of status quo. The Council unanimously supported remaining at status quo. I urged adoption of the Council's recommendation, and you concurred. However, in the decision memo (dated April 5, 2010), I noted that staff was updating the status of tautog (jointly with MA Marine Fisheries), and on the basis of that update, there might be a need to consider changes to the management program for next year.

The updated stock assessment emerged soon after the April 5 decision memo and prompted the development of the *Issue Paper* in May. The Paper called attention to the significant concerns associated with the stock and fishery (as described above) and suggested the need for more immediate consideration of additional restrictions on the recreational fishery, with a particular focus on decreasing the fall bag limit. A new public hearing and RIMFC process ensued during June and July.

As reflected by the public hearing transcript, there was no consensus on any one proposal. Moreover, the Council deadlocked (3-3 vote) on a motion that would have recommended the following:

- A decrease in the fall possession limit from 8 to 6 fish (applicable to the entire recreational fishery, including the party and charter boat sector); and
- Adoption of a new provision establishing a 10 fish/boat limit for the private boat sector

One key reason for the deadlock was that the party and charter boat interests felt strongly that they should not be subject to the reduced possession limit. Their opposition was based on their relatively low level of landings relative to the rest of the recreational fishery, and the economic impact that a mid-season change would have, given that many tautog trips have already been booked for this fall based on the current 8-fish/person regulation. The contention was made that trips would be cancelled if a reduction were enacted at this time. The other key reason for the

deadlock was that the private-boat and shore-based interests felt that if a reduced possession limit were to be adopted, it should pertain to all recreational fishers, including party and charter boats.

As a follow-up to the tie vote on the above-described motion, the Council voted favorably (3-2, with 1 abstention) to recommend adoption of the proposal offered by the RI Party and Charter Boat Association, i.e.:

- The establishment of a split mode for the party and charter boat sector and, for that sector: a 1 fish/person possession limit through the 3rd Friday in October; an 8 fish/person possession limit from the 3rd Saturday in October to November 30; and a 1 fish/person possession limit from December 1 to December 31; and
- The establishment of a mandatory logbook reporting protocol for all tautog fishing activities undertaken by the party and charter boat sector.

The motion was conditioned on adoption of the measures for the remainder of 2010, with a commitment to revisit the measures in advance of the 2011 season.

Division Recommendation

There is a compelling need to reduce fishing mortality in the recreational tautog fishery. RI and MA share responsibility for managing the regional tautog stock. RI's higher possession limit in the fall appears to be a primary cause of the overfishing that is occurring on the stock. It also incentivizes MA fishermen to fish in RI waters, further contributing to the disproportionately high take from RI waters.

On the one hand, it is reasonable to suggest that if the recreational harvest is to be reduced, the reductions should apply to all recreational fishers. On the other hand, the party and charter boat fleet is relatively small and stable, and lands just 4% of the total recreational tautog harvest. That figure is based on the best available data (i.e., MRFSS). While there is reason to believe that the actual percentage (as indicated by logbooks) may be a bit higher, there is no doubt that the vast majority – upwards of 72% -- of tautog caught recreationally in RI are taken by private-boat fishermen, with the vast majority of those taken in the fall fishery. The Division is inclined to focus the primary reductions on the primary harvesters.

Moreover, while a reduction in the possession limit for private-boat and shore-based fishermen will have some economic impact – e.g., fewer outings, and less associated expenditures, due to a disinclination to fish as much under a lower possession limit – the economic impact for the party and charter boat sector would likely be more significant, particularly for this year. Trips have been booked for the fall season based on the expectation of an 8-fish/person management program, and the industry contends that cancellations will occur if there is a mid-year reduction in the possession limit. The Division is inclined to protect the business interests of the party and charter boat fleet by not changing the possession limit for that sector for the 2010 fall fishery.

The Division's original proposal to decrease the possession limit, across-the-board, to 3-fish/person would result in a projected 25.3% reduction in landings. As noted earlier, rendering RI's bag limit consistent with MA could result in an even greater reduction as it would remove the incentive for MA fishermen to fish in RI waters. The Division had also suggested an early closure to the fall fishery (i.e., November 16), which would result in an additional 28% reduction in landings; or a spring closure, resulting in an additional 24% reduction in landings. Those measures would have achieved a total reduction approaching 45%, the amount needed to achieve the target fishing mortality for stock rebuilding and protection purposes.

The public hearing and Council process engendered an intriguing new approach to reducing fishing mortality: a 10-fish/boat limit. While the Division does not yet have the ability to

calculate the percentage reduction that such a measure would achieve, it is clear that the measure would have a significant impact on total landings. The Division is inclined to adopt that approach, and monitor its effectiveness in reducing recreational fishing mortality.

Based on the above considerations, I urge adoption of the following measures for the remainder of 2010:

- 1. Establishment of a split mode for the party and charter boat sector and, for that sector:**
 - a. A 1-fish/person possession limit through the 3rd Friday of October;**
 - b. An 8-fish/person possession limit from the 3rd Saturday in October to November 30; and**
 - c. A 1-fish/person possession limit from December 1 to December 15.**
- 2. Establishment of a mandatory logbook reporting protocol for all tautog fishing activities undertaken by the party and charter boat sector.**
- 3. For the remainder of the recreational fishery:**
 - a. A 3 fish/person possession limit through the 3rd Friday of October [status quo];**
 - b. A 6-fish/person possession limit from the 3rd Saturday in October to December 15; and**
 - c. A 10-fish/boat possession limit through December 15.**

Additionally, I suggest that a reduction in the possession limit for the party and charter boat sector – from 8 to 6 fish/person – be slated for adoption for the 2011 fall fishery. That measure, in addition to continuation of the adjusted 2010 management program, a more thorough examination of the spring fishery, and any other potential adjustments, can be addressed over the winter when the tautog AP reconvenes to review updates and consider recommendations for 2011.

Lastly, in view of the strong concerns expressed at hearing and by the Council with regard to the perceived increase in illegal harvest activities within the tautog fishery (i.e., black market for live fish) and the effect of such activities on the management of the stock, the Division of Law Enforcement should be provided with the resources needed to nab poachers.

Affirmed as recommended: August 20, 2010 W. Michael Sullivan