



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: November 6, 2013

SUBJECT: Request for Decisions on the September 18, 2013 Marine Fisheries Public Hearing Items

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 September 18, 2013 and subsequent consideration by the RI Marine Fisheries Council (Council) at their October 7, 2013 meeting. Supporting documentation submitted along with this memorandum include: the public hearing summary document; the summary of public hearing comments; (one person from the public attended the hearing; no written comments were submitted); the October 7 Council meeting minutes; and the applicable advisory panel meeting minutes.

Having reviewed the entire record, and conferred with staff, I hereby urge adoption of the proposed changes, as set forth below. 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. If you wish to make any changes that differ from those proposed, please delineate those changes via a separate memo.

1. Sector Management Plan Updates for 2014

Pursuant to state statute, fishery conservation and management plans, focused on the resources with the highest value, are to be developed and adopted by the Department "prior to and at the same time as" adoption of any license restrictions on effort or catch. The Department has implemented that requirement via the development and adoption of three sector management plans, one each for Finfish, Shellfish, and Crustaceans. Although the plans summarize the relevant licensing and management programs applicable to each fishery sector, they are not regulations per se. Rather, they are companions to the regulations and are intended to support, complement, and be consistent with them. As a long-standing practice, the Division has updated the management plans annually, and synched that process with the annual review of the licensing regulations. Because of the statutory mandate to adopt the plans by rule, the proposed changes to the plans are noticed and subject to a hearing, along with any proposed changes to the licensing

regulations. Ultimately, the plans are always rendered consistent with any/all enacted changes to licensing and other regulatory and management programs.

Finfish Sector Management Plan

The proposed amendments to the Finfish Sector Management Plan include the updated status of the major stocks and a status quo approach for new license opportunities in 2014.

With regard to stock status, several species, including *summer flounder*, *scup*, and *black sea bass*, are improving; others, including *monkfish* and *bluefish*, are remaining relatively stable; and some, including *winter flounder*, *tautog*, *cod*, and *menhaden*, are below their biological thresholds and/or targets. *Striped bass* has long been considered healthy and stable, but a new, recently completed stock assessment indicates that the stock has declined from its historic levels of peak abundance.

With regard to licensing recommendations, the following provisions were proposed in the plan and associated licensing regulations:

- Status quo with regard to new restricted finfish endorsement opportunities for 2014
 - i.e., 1:1 exit/entry ratio applied to active licenses that retire
- Given that 8 active finfish licenses retired in 2013, 9 new restricted finfish endorsements would be made available for 2014
- New provisions that would remove scup from the restricted finfish category during the winter (federal) period (November – April), and remove winter flounder from the restricted finfish category year-round.
- Status quo with regard to new non-restricted finfish endorsements
 - i.e., open access
- Consolidate landing licenses to three categories: resident, non-resident, and non-resident with restricted finfish (grandfathered)
- A new proposal to cap access to the purse seine and pair trawl endorsement categories
- A new proposal to explore options for amending the entire licensing program, e.g., converting from individual-based licensing to vessel-based licensing, and modifying the fee structure.

Shellfish Sector Management Plan

The proposed amendments to the Shellfish Sector Management Plan include the updated status of the major stocks and a status quo approach for new license opportunities in 2014.

With regard to stock status, *quahogs* remain stable. Results from the DFW dredge survey suggest that the stratified mean density of quahogs in Narragansett Bay has been fairly constant since 1993. The status of *soft-shelled clams* in Narragansett Bay remains poor, while the resource in the coastal ponds is unassessed. Preliminary results from a Narragansett Bay steamer stock assessment suggest a declining population from 2006 to present, with recruitment failing to replace fishery removals. The abundance of *whelks* is declining, while fishing mortality is

increasing. Status relative to conventional biological reference points (e.g. overfished, overfishing) has yet to be resolved. Preliminary work suggests the aforementioned status.

With regard to licensing recommendations, the following provisions were proposed in the plan and associated licensing regulations:

- Status quo with regard to new shellfish endorsement opportunities for 2014, i.e.:
 - 2:1 exit/entry ratio applied to eligible quahog licenses that retire
 - Given that 55 eligible quahog licenses retired in 2013, 28 new quahog endorsements would be made available for 2014
 - 5:1 exit/entry ratio applied to eligible soft-shelled clam licenses that retire
 - Given that 52 eligible soft-shelled clam licenses retired in 2013, 11 new soft-shelled clam endorsements would be made available for 2014.
 - no new whelk endorsements, except for holders of quahog or soft-shell clam endorsements who have been actively fishing
- Status quo with regard to the Other Shellfish endorsement category
 - i.e., open access

Crustacean Sector Management Plan

The proposed amendments to the Crustacean Sector Management Plan include the updated status of the major stocks and a status quo approach for new license opportunities in 2014.

With regard to stock status:

- The *American lobster* stock in southern New England remains in poor condition based on the recommended biological reference points.
- Fishing mortality rate on the two *Cancer* crab species (*Jonah and Rock crabs*) has recently exceeded the Fmsy level and should be monitored in the future. However, biomass is above the Bmsy level indicating that the resource is not considered overfished at this time. Recent *Cancer* crab abundance in the URI/GSO trawl survey is below the time-series mean.
- *Horseshoe crabs* were determined to be overfished and at low abundance in 2001, and the trend of low abundance has continued through early 2013. Updated stock assessment shows that fishing mortality rate has been reduced to below the Fmsy reference point, but stock abundance has not yet recovered to the Bmsy level.
- The abundance of blue crab in the URI/GSO trawl survey is currently above the time-series mean; however, there is not sufficient data to assess the stock status of Blue crab in RI state waters at this time.

With regard to licensing recommendations, the following provisions were proposed in the plan and associated licensing regulations:

- No new commercial lobster licenses/endorsements or landing licenses applicable to lobster for 2014.
- Jonah and Rock crab licenses/endorsements do not need to be limited at this time and can likely sustain harvest levels equal to current licensees.

- Horseshoe crab abundance has not recovered and new restrictions, in addition to the current quotas and spawning period closures, may be needed; the permit to harvest horseshoe crabs should be replaced with a license endorsement to provide a more effective mechanism for ensuring timely reporting of landings; the current quota-based management system does not require limiting access (endorsements) to the fishery at this time.
- Blue crab abundance is currently (2012) above the time-series average; there is not sufficient data to assess stock status in RI state waters; and there is no need to limit access to this fishery at this time.

Final Sector Plan Recommendations

The proposed changes to the licensing regulations, as set forth in the management plans, reflect the recommendations of the Council's Industry Advisory Committee (IAC). No comments were received on the management plans at the public hearing. At the Council meeting, the Division noted that two of the recommendations set forth in the finfish plan – the proposal to cap access to the purse seine and pair trawl endorsements, and the proposal to explore major changes to the licensing system -- were being withdrawn, given that the issues had not yet been sufficiently vetted by the IAC. The Council briefly discussed the status of cod and blue crabs with Division staff before recommending adoption of the three plans, as amended (via three separate motions).

Consistent with the Council's recommendations, the Division recommends adoption of the 2014 Finfish, Shellfish, and Crustacean Sector Management Plans, as amended, consistent with the final licensing and regulatory decisions on the matters set forth below.

2. New License Opportunities – Exit/Entry Ratios (changes to Licensing Regulations)

As noted above, the proposal regarding new license opportunities, aka exit/entry ratios, was to remain at status quo, i.e.:

- For restricted finfish endorsements: 1:1 exit/entry ratio applied to active finfish licenses that retire;
- For quahog endorsements: 2:1 exit/entry ratio applied to eligible quahog licenses that retire;
- For soft-shelled clam endorsements: 5:1 exit/entry ratio applied to eligible soft-shelled clam licenses that retire;
- For whelk endorsements: no new whelk endorsements, except for holders of quahog or soft-shell clam endorsements who have been actively fishing; and
- For lobster endorsements: no new endorsements.

Additionally, a regulatory proposal was offered to address the fact that there are three categories of priority status for new license/endorsement applicants, each category having equal standing. Existing regulation only addresses the scenario in which the exit/entry ratio results in less than three new licenses/endorsements, in which case three new licenses/endorsements are to be made available. The new proposal, which was noticed only with regard to restricted finfish endorsements, addresses the scenario in which the exit/entry ratio results in more than three licenses/endorsements, but not a multiple of three. It addresses it by rounding up, to a multiple of three.

The IAC recommended remaining at status quo with regard to the exit/entry ratios and recommended adoption of the above-described rounding-up proposal. No comments were received at the public hearing. At the Council meeting, the Division expressed its support for remaining at status quo, and for the new rounding-up proposal, while noting that the new rounding-up proposal only pertained to new restricted finfish licenses/endorsements, but could be expanded to apply to new shellfish licenses/endorsements as well. The Council concurred and recommended remaining at status quo with regard to the exit/entry ratios, adoption of the new rounding-up proposal for restricted finfish and expansion of the rounding-up provision to apply to new shellfish licenses/endorsements as well.

Consistent with the Council's recommendation, the Division recommends maintaining status quo for all exit/entry ratios and adoption of the proposed new rounding-up procedure for new restricted finfish, quahog, and soft-shelled clam licenses/endorsements, such that if the exit/entry ratios result in a number that is less than a multiple of three, the number to be made available will be rounded up to a multiple of three.

3. Proposed amendment to restricted finfish endorsement category -- Winter Flounder and Scup (changes to Licensing Regulations)

As noted above, two proposed changes to the licensing regulations involve the removal of winter flounder from the restricted finfish endorsement category, on a year-round basis; and the removal of scup from the restricted finfish endorsement category during the winter period (November – April) when scup are managed under a federal quota system. Under existing regulations, both species are part of the group of six that are categorized as restricted finfish (along with summer flounder, black sea bass, tautog, and striped bass). In essence, the six species, by virtue of their categorization, are regulated as controlled access fisheries; i.e., they can only be harvested in RI waters and landed in RI by licensees with restricted finfish endorsements, and harvested in federal waters and landed in RI with restricted finfish landing permits.

For summer flounder, black sea bass, tautog, and striped bass, it makes sense to maintain their status as restricted fisheries. They are all subject to state quotas, and thus there is a need and interest on the part of industry and the Division to control access to the resource to enable the state's quota to be managed effectively.

However, winter flounder are not subject to state quotas. Because they are often harvested in conjunction with other non-state-quota species, such as cod, yellowtail flounder, and other groundfish, having winter flounder onboard can prevent a vessel (without a restricted finfish landing permit) from landing its harvest in RI. Removing winter flounder from the restricted finfish category will open up more landing opportunities in RI, which is particularly important at this point in time given recent changes to federal regulations that increased harvest opportunities in federal waters. The proposed removal will also open up more harvest opportunities in RI state waters, as winter flounder would become an open-access fishery in RI state waters. That could lead to an increase in fishing mortality in state waters; however, given the low daily possession limit in RI (50 pounds/vessel/day, south of the ColRegs line), any such increase is unlikely to be significant. What's more, the liberalization may have the effect of converting more dead discards into landings.

Scup are subject to state quotas, but only during the period from May through October. During the winter period, from November through April, they are managed pursuant to a federal, coastwide quota. As such, the categorization of scup as a restricted finfish year-round inhibits landings in RI during the winter period, when such landings do not count against a RI quota. Removing scup from the restricted finfish category during the winter period will open up more landing opportunities in RI, which is particularly important given scup's high level of abundance and associated high coastwide quota. The proposed removal will also open up more harvest opportunities in RI state waters during the winter period, as scup would become an open-access fishery in RI state waters during that time period. However, scup are generally not present in RI waters in large numbers during that time of year; and even if they were, any increase in fishing mortality would have an insignificant impact on the stock, given their abundant status.

The IAC unanimously recommended adoption of the proposal. No comments were received at the public hearing. At the Council meeting, the Division recommended adoption. The Council concurred and unanimously recommended adoption as proposed.

Consistent with the Council's recommendation, the Division recommends adoption of the proposed amendment, i.e., the removal of winter flounder from the restricted finfish endorsement category, on a year-round basis; and the removal of scup from the restricted finfish endorsement category during the winter period (November – April).

4. Proposed adoption of new Paper Logbook Endorsement (change to Licensing Regulations)

The proposed amendment establishes a new paper logbook endorsement. Under existing regulation, all commercial fishermen fishing in RI state waters, except shellfishermen, are required to maintain and submit to DEM either state logbooks furnished by the Division, or Vessel Trip Reports (VTRs) furnished by NOAA Fisheries. (Per federal regulation, all commercial fishermen fishing in federal waters are required to maintain and submit VTRs to NOAA Fisheries.) The funding that DEM has relied upon to develop and furnish state logbooks is ending in 2015, thus creating the need to find an alternative source of funding to support this activity. To address the issue, and to help incentivize more fishermen to switch over to electronic reporting, a new paper logbook endorsement is proposed. The fee for the endorsement would be \$25, which would cover the costs of developing and furnishing each logbook. The endorsement will be optional. Any fishermen who reports electronically, via DEM's internet-based eTrips program, is exempt from the paper logbook requirement and would therefore be exempt from the new paper logbook endorsement. Also, federally permitted fishermen who maintain and submit VTRs are not subject to any other reporting requirements, so they too would be exempt from the new paper logbook endorsement. The new endorsement would only apply to commercial finfish and lobster fishermen, fishing in RI waters, who do not submit VTRs and who wish to continue using the state-issued paper logbooks in lieu of electronic reporting.

The IAC recommended adoption of the proposal. No comments were received at public hearing. At the Council meeting, the Division recommended adoption of the proposed amendment. The Council concurred and unanimously recommended adoption as proposed.

Consistent with the Council's recommendation, the Division recommends adoption of the proposed amendment, i.e., the establishment of a new paper logbook endorsement. Ultimately,

the Division envisions transitioning from the so-called two-ticket system now in place (involving both logbook/VTR effort data submitted by fishermen and landings data submitted by dealers) to a one-ticket approach involving the collection of all catch and effort data, electronically, upon landing at the dealer. Until that technology is developed and adopted, fishermen need to continue submitting effort data. The Division is providing fishermen with a no-cost option to do that electronically, and agreeing to maintain paper logbooks, for a fee, for those who wish to continue using paper logbooks.

5. Proposed amendments to trawling gear regulations (change to Part X)

The proposed amendment would modify the current prohibition on the use of rollers greater than 18 inches in diameter on trawling gear while fishing for scup or black sea bass by prohibiting the use of any rollers, rockhoppers, or discs greater than 12 inches in diameter on trawling ground gear while fishing for any species in RI waters. The proposal was brought forward by industry, based on concerns that the use of large rolling/rockhopping gear may be adversely impacting bottom habitat and dependent resources, given the ability of large gear to dislodge boulders, which serve as a critical habitat for squid eggs, tautog, and other species. The proposed reduction in the maximum size of rollers from 18 to 12 inches would render RI's regulations consistent with those in effect in Massachusetts. The IAC unanimously recommended adoption of the proposal. One public comment was received 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 unanimously recommended adoption as proposed.

Consistent with the Council's recommendation, the Division recommends adoption of the proposed amendment, i.e., the tightening of restrictions on the use of rolling/rockhopper gear. The measure is conservation-oriented, and supports the interests of industry, who recognize that 12-inch roller/rockhopper gear is sufficient for nearshore bottom trawling operations and more protective of nearshore bottom habitat than 18-inch gear, which is more suitable for offshore activities.

6. Proposed enactment of seasonal closure for Lobsters in Area 6 (change to Part XV)

The proposed amendment establishes a season closure for the landing of lobsters from September 8 to November 28 annually from LCMA 6. That area encompasses Long Island Sound. The closure is necessary in order to maintain consistency with Addendum XVII to the ASMFC's Lobster FMP, which calls for a 10 percent reduction in exploitation in the southern New England stock in each LCMA. There are various options available to achieve the reduction; the approach agreed to for the Area 6 LCMA is a seasonal closure. The measure has little impact on RI interests, since few, if any, RI fishermen harvest lobster from Area 6. The measure was not brought before the Lobster Advisory Panel. No comments were received at the public hearing. At the Council meeting, the Division recommended adoption of the proposed amendment. The Council concurred and unanimously recommended adoption as proposed.

Consistent with the Council's recommendation, the Division recommends adoption of the proposed amendment, i.e., the establishment of a seasonal closure for the landing of lobsters from LCMA 6. The measure will have little, if any, effect on RI interests.

7. Proposed amendment to Horseshoe Crab regulations (changes to Part XIX)

The proposed amendment would adopt in final form a regulation that has already been enacted as an emergency regulation. The regulation prohibits the possession of non-indigenous horseshoe crab species, without written authorization by the Department. The need for the prohibition stems from an advisory issued by the ASMFC. The Commission received information that non-indigenous horseshoe crab species were being imported into US markets. That activity raises concerns regarding the potential introduction of disease into domestic horseshoe crab populations. The ASMFC passed a resolution requesting state support for banning the importation and possession of non-indigenous horseshoe crabs. The initial RI response was a series of emergency regulatory actions, filed on several occasions over the past several months. The current proposal completes the process, as it follows a public hearing. No comments were received at the public hearing. At the RIMFC meeting, the Division recommended adoption of the proposed amendment. The Council concurred and recommended adoption as proposed.

This exact same measure has already been adopted in final form in Part XV. This follow-up enactment simply renders Parts XIX, which also addresses horseshoe crabs, consistent with Part XV.

Consistent with the Council's recommendation, the Division recommends final adoption of the original emergency regulation, pursuant to the request made by the ASMFC.

8. Proposed new endorsement categories for Horseshoe Crab biomedical and Horseshoe Crab bait (changes to Part XV and Licensing Regulations)

The proposed amendment would add two new endorsement categories to the licensing program: horseshoe crab – bait, and horseshoe crab – biomedical. The two endorsements would replace the existing horseshoe crab permit. The new endorsements would be available to any RI resident (open access), for a fee.

The issue is an important one. It is aimed at addressing problems with late reporting that stem in part from the existing permitting program, which is not tied to the licensing program. The proposal was recommended for adoption by both the IAC and the Council. However, upon further review, the regulations, as proposed, need further work, as they do not address multipurpose license holders. Given the need to establish a program that applies to all harvesters of horseshoe crabs, including those holding multipurpose licenses, the Division recommends withdrawing the proposal, maintaining the existing permitting program for 2014, and revisiting the issue, via subsequent notice, hearing and Council consideration, in the near future.

For the reasons noted above, the Division does not recommend adoption of these proposed amendments at this time. The Division will continue to administer the existing horseshoe crab permitting program during 2014, and will continue to urge harvesters to report their landings in a timely fashion, per existing reporting requirements.

9. Proposed amendments to Landing Permits (changes to Licensing Regulations)

The proposed amendments would consolidate the existing eleven categories of landings licenses into the following three:

- Resident Landing Permits: able to land all species, including restricted finfish;
- Non-Resident Landing Permits: able to land all species except restricted finfish;
- Non-Resident Landing Permits with Restricted Finfish: able to land all species, including restricted finfish (grandfathered)

The issue is an important one. It is aimed at simplifying the landing permit program, making it easier for industry to understand and comply with the permit requirements, and supporting enforcement based on the more streamlined approach. The proposal was recommended for adoption by the IAC and the Council. However, upon further review, the regulations, as proposed, are not consistent with statute, particularly with regard to the proposed fee structure. As such, the Division recommends withdrawing the proposal, maintaining the existing landing permit program, and developing a legislative proposal that will accomplish the goals and objectives of the regulatory proposal.

For the reasons noted above, the Division does not recommend adoption of these proposed amendments at this time. The Department will continue to administer the existing landing permit program, and will develop a legislative proposal aimed at streamlining the program in a manner similar to the regulatory proposal.

10. Proposed amendments to licensing provision involving Issuance of New Licenses Upon Sale of Vessel and Gear (changes to Licensing Regulations)

The proposed amendments would clarify an ambiguous provision of the current licensing regulations relating to the vessel involved in a transaction that enables the buyer to obtain a new license, pursuant to section 6.7-8 of the licensing regulations. The existing regulations are clear with regard to the need for the seller to meet the “actively fished” standard. The existing regulations are not clear, however, with regard to the vessel involved in the sale. In an effort to clarify this matter, two options were presented at the public hearing. Both involved variations on the same theme – that the vessel involved in the transfer must have been the same vessel that was actively fished by the seller, or if the seller owned a prior vessel, the two vessels must have been similar in size. One option included a minimum harvest requirement for one of the two vessels, the other did not.

The IAC recommended tabling the matter, particularly in view of the fact that the Division had not yet developed proposed regulatory language as of the date of the meeting. One comment was received at the public hearing, strongly opposed to both options. At the Council meeting, the Division noted that the proposed amendments should be withdrawn and subject to further review and discussion, given the concerns and uncertainties raised by the IAC and the public hearing comment. The Council expressed its concern with various aspects of the proposal and unanimously recommended that proposed amendment not be adopted.

Consistent with the Council’s recommendation, the Division does not recommend adoption of these proposed amendments. Further review and discussion is needed, in coordination with DEM’s Office of Boat Registration and Licensing, to determine whether the matter warrants further consideration. If a new proposal is developed, it will be revisited via subsequent notice, hearing and Council consideration.



Approved for filing as presented

Janet Coit

Janet L. Coit, Director

11/7/13

Date