



RHODE ISLAND
DEPARTMENT OF ENVIRONMENTAL
MANAGEMENT

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To: Mark Gibson
Deputy Chief for Marine Fisheries, DFW

From: W. Michael Sullivan
Director

A handwritten signature in black ink that reads "W. Michael Sullivan".

Date: December 4, 2007

Re: Decision on October 24, 2007 Marine
Fisheries Public Hearing Items

I am writing in response to your November 19, 2007 memorandum regarding the regulatory proposals presented at the October 24, 2007 public hearing.

I have reviewed all of the supporting documentation forwarded with your memo – the minutes of the two RIMFC Industry Advisory Committee meetings, the public hearing summary document, the summary of public hearing comments, and the minutes of the RIMFC November 5, 2007 meeting.

Pursuant to my review and consideration of all of the above-noted information, I have reached the following decisions on these matters.

Management Plans for the Shellfish, Finfish, and Crustacean Sectors.

Please modify the plans to comport with the final decisions, set forth in this memo. Also, incorporate into the shellfish plan the one-page analysis of shellfish licenses and landings that was presented to the Council, as well as the CPUE analysis for the soft-shell clam fishery that was conducted by staff and referred to at the Council meeting. Once the plans are reconciled with the final licensing decisions, and underlying rationale, please file them with the Secretary of State, per standard procedure.

Commercial Fishing Licensing Regulations

Shellfish

Quahogs – I concur with your recommendation, and that of the Council, to *retain the 3:1 exit/entry ratio, as applied to holders of Principal Effort Licenses (PELs) with Quahog endorsements that retired in 2007.* Since there were 49 such retirees, 16 new Quahog endorsements on Commercial Fishing Licenses (CFLs) will be available in 2008.

The SAFIS database shows that of the 49 retired licenses, just 3 landed quahogs in 2006 (and of the 46 Multi-Purpose Licenses that retired in 2007, just 3 landed quahogs in 2006). Thus, by offering 16 new endorsements in 2008, we are allowing continued growth in the fishery, consistent with past practice and ongoing indications of a stable quahog stock in state waters.

Soft-shell Clams – This fishery presents a new and interesting challenge. Since 2002, the fishery has been subject to open licensing. Whereas the number of eligible license holders has remained fairly steady (at about 1,700) over the past few years, I note that there has been evidence of a surge in effort and landings between 2006 and 2007: the number of entry-level licenses jumped (from 247 to 323); the number of active participants in the fishery increased (from 158 to 247); landings nearly doubled (from 643,594 to 1,076,052 pounds); and the number of days fished more than doubled (from 2,537 to 5,719). And, according to an analysis conducted by DEM staff, there was a drop in catch-per-unit-effort in one area of the Bay. Taken together, these figures suggest a potential trend toward overfishing, or that it may already be occurring. As noted at the Council meeting, we lack stock assessment data for soft-shell clams, and that puts us at a disadvantage in attempting to establish an appropriate management response. In recognition of this gap, I hereby reiterate my request to you and your staff to develop a proposed stock assessment program for this resource, with a supporting budget. Once you have identified the programmatic elements and budget, we need to strategize on its implementation, with a view to broadening our knowledge of this fishery.

Although we currently lack a good handle on the status of the soft-shell clam resource in RI waters, the visible and apparent trend toward overfishing cannot be overlooked. Accordingly, I concur with your recommendation, and that of the Council, to establish some initial and defensible baseline management controls in the fishery, through licensing, by:

- 1) *creating a new soft-shell clam endorsement;*
- 2) *making the new endorsement available only to those who, in 2007, held either a CFL with a Non-Quahog Shellfish endorsement or a PEL with a Quahog or Non-Quahog Shellfish endorsement; and barring the issuance of the new endorsement to anyone else; [all MPL holders will remain eligible to harvest soft-shell clams, without the need for an endorsement];*

- 3) *in accordance with statute, establishing a \$25 fee for the new endorsement on CFLs, and a \$75 fee for the new endorsement on PELs (but no charge if it is the only endorsement on the PEL); and*
- 4) *redefining the non-quahog shellfish endorsement category as "Other Shellfish," to include all shellfish species available for commercial harvest except quahogs and soft-shell clams; with the same \$25/\$75 fee structure as noted above; available to anyone, without restriction.*

I note that these measures will not necessarily limit further expansion of effort in the fishery. The number of eligible applicants for soft-shell clam endorsements in 2008, drawing from the pool of eligible 2007 license holders, will be over 1,800. Yet there were only 247 active participants in the fishery in 2007. A sevenfold increase in participation is certainly not likely, but it is possible under the licensing program that will be in effect for 2008. With a pending stock assessment slated to tell us whether the resource is being depleted, I feel that it would be irresponsible not to impose a control date for the fishery at this time. I recognize that there was little support offered for a control date (or any other licensing change) at the public hearing, yet there was also no meaningful comment on management options or alternatives. I further recognize that the Council ultimately opted not to recommend adoption of a control date; however, to its credit, the Council engaged substantively on the matter, and I found their input to be quite valuable.

I note that a control date, as set forth in section 6.1-9 of the licensing regulations, ***will not and does not*** commit the Department to any particular management regime or criteria for limiting future access to a fishery, but ***does*** provide notice that further expansion of effort in the fishery is a potential concern and could be subject to future effort-reduction proposals if it is determined that the resource is being overfished. I further note that a control date is meaningful if, and only if, subsequent regulatory action is taken that relates back to the control date; if no such future action is taken, the control date, in and of itself, means nothing.

Accordingly, *I support and accept your recommendation to enact a December 31, 2007 control date for the soft-shell clam fishery.* At the very least, I would hope that this action will discourage any speculative shifting of effort into the fishery. I would also hope that the additional knowledge gained in the anticipated assessment might allow us to conclude that further restrictions are not necessary.

Finfish

Restricted Finfish – This fishery also presents an interesting challenge, albeit not a new one. Over the past few years, I have supported the Council's recommendations, with the Division's support, to keep the Restricted Finfish endorsement category closed. Shrinking quotas, along with low daily possession

limits and closures, have given rise to the need to protect the interests of existing license holders by preventing new entry.

I note that there was a fair amount of support expressed at the public hearing for new endorsement opportunities in this sector. I further note that there was a spirited discussion on the matter by the Council, leading to a 5-2 vote in favor of maintaining the status quo.

As you point out in your memo, I believe that we have a statutory obligation to try and balance the interests of existing license holders and the interests of those (residents) who want to obtain licenses and become commercial fishermen. While we have facilitated a good amount of new entry into the shellfishing and non-restricted finfish sectors, we have kept a fairly tight lid on the restricted finfish sector. To date, I have supported this approach largely based on staff and Council recommendations, and because of the lack of detailed information on the status of license holders who have retired from the fishery. Now, with the SAFIS database up and running, we have, for the first time, a good understanding of the status of those who exited the fishery in 2007.

As reported to the Council, in 2007, a total of 61 license holders eligible to harvest restricted finfish (46 MPLs and 15 PELs with Restricted Finfish endorsements) retired their licenses. Of those 61 retirees, 15 reported landing restricted finfish in 2006. The activity levels of those 15 fishers ranged considerably, with only two of them reporting significant quantities of quota species (a total of 7,209 pounds of summer flounder, 217 pounds of striped bass, 3,978 pounds of scup, 1,036 pounds of black sea bass, 319 pounds of tautog, and 41 pounds of winter flounder). The other 13 retirees landed lesser amounts individually, but their collective total landings in 2006 were noteworthy: 1,595 pounds of summer flounder, 1,289 pounds of striped bass, 802 pounds of scup, 69 pounds of black sea bass, 44 pounds of tautog, and 75 pounds of winter flounder. Clearly, a measurable amount of effort left the fishery in 2007.

To date, we have only opened (i.e., cracked) the door to new entry in the restricted finfish sector once, in 2005, when we employed a 5:1 exit/entry ratio, applied to all licenses in the restricted finfish sector that retired the prior year, resulting in the issuance of 13 new Restricted Finfish endorsements. That same approach, if applied to the 61 licenses that retired in 2007, would result in 12 new endorsements for 2008. That infusion of new effort would clearly allow for growth in the fishery, which I cannot support given the current state of the quota management programs.

However, per your recommendation, I can support a 5:1 exit/entry ratio applied to the (15) *active* licenses that retired in 2007. That would result in 3 new endorsements to be made available for 2008, and allow for a level of new effort that more or less replaces the estimated overall level of effort that left the fishery. Adding 3 new participants to the existing pool of 1,267 license holders eligible to

harvest restricted finfish should not impact the interests of the existing license holders to any appreciable degree. And given the nature of the priority process established in the regulations, the 3 new endorsements will almost certainly go to RI residents who have been actively fishing or crewing. Despite the ongoing challenges in the quota fisheries, we need to stay true to one of the core principles of the licensing program, which is to provide real and meaningful opportunities for people to enter, and advance within, the industry. This action, while quite modest, is a nod in that direction.

Please establish a 5:1 exit/entry ratio for the restricted finfish endorsement category, applied to the total number of licenses eligible to harvest restricted finfish that were active in the fishery in 2006 as measured by SAFIS reporting data and retired in 2007.

Purse Seine and Mid-Water Pair Trawl Endorsements – I note that there was broad support from the Council and from you, with no public opposition, regarding the proposed establishment of new purse seine and mid-water/pair trawl gear endorsements. These are to be made available to applicants seeking finfish endorsements (renewals or new, restricted or non-restricted) or renewals of their MPLs, and wish to employ either of these gear types when fishing for finfish in RI waters. Given the need to carefully monitor stock status and landings of Atlantic menhaden in Narragansett Bay, and the need to guard against fixed-gear damage caused by nearshore pair trawl activities, *I support the establishment of these two new gear endorsement categories as a means of strengthening our management capabilities. I further endorse the specific application/endorsement requirements set forth in your memo, namely:*

- 1) Applicants/holders of both endorsements must consent to carry an observer on the vessel and/or on any spotter plane used as part of the operation, at the request of the Division of Fish & Wildlife;*
- 2) Applicants/holders of both endorsements must report any/all landings of Atlantic menhaden on a daily basis (if active) to the Division of Fish & Wildlife;*
- 3) Applicants/holders of both endorsements must report beginning, location, and cessation of fishing activities on a daily basis (if active) to the Division of Law Enforcement; and*
- 4) Applicants/holders of both endorsements must obtain and have on board charts showing the known locations of fixed-gear clusters, as provided by the Division of Fish & Wildlife.*

The two new endorsements are to be made available at a cost of \$20 per endorsement. [I note that the statute allows this fee to be set as high as \$200; yet the regulatory proposal only proposed a \$20 fee, which is comparable to the other gear endorsement fees. Thus, at this time I have no choice but to adopt the proposed \$20 fee. I feel strongly, however, that this fee, and many others

associated with the licensing program, need to be evaluated. Given the amount of staff time and Departmental resources needed to monitor, track, and manage these and other fisheries, the current fee structure strikes me as being woefully inadequate.]

With regard to the control date proposal for these two fisheries, I note that that issue again was the subject of spirited discussion by the Council, resulting in a 4-1 vote, with 2 abstentions, not to recommend adoption. I further note your recommendation to establish a control date, notwithstanding the Council's vote.

My take on this matter is the same as that offered with regard to the soft-shell clam issue. The new gear endorsements will help to manage the Atlantic menhaden and Atlantic herring fisheries, but they will not limit further expansion of those fisheries. There were 1,398 license holders eligible to harvest these species in RI waters in 2007, and that number could grow in 2008 and in future years since anyone can obtain a Non-Restricted Finfish endorsement by simply applying for one. In 2007, just two vessels fished for Atlantic menhaden in Narragansett Bay, but even that small fishery posed management challenges and gave rise to vibrant discussions on impacts, perceived or real. The issue of menhaden management was the subject to intense review and discussion at a recent symposium, and will continue to be in the months and years to follow. At this point, there is no apparent need to restrict new entry or gear levels in the fishery in the near or distant future. But if a number of new participants were to enter the fishery, it could result in relatively low daily possession limits and/or closures, to prevent more than 50% of the standing biomass from being harvested, per the Department's current management program. Such restrictions could impact the economic viability of the Atlantic menhaden fishery, which in turn could impact the commercial lobster fishery and the sport fishery, which are dependent on the Atlantic menhaden fishery as a source of bait. As such, it would seem irresponsible not to impose a control date in the Atlantic menhaden fishery (via the purse seine and mid-water/pair trawl endorsement categories) at this time, since it merely provides notice that any future expansion of the fishery could be subject to future curtailment, if deemed necessary based on the evolving management program. The control date thus serves as a potential tool in the management tool box, but one that can only be employed via subsequent regulatory action undertaken through the standard public hearing/Council process. This is a defensible process and preferable to the emergency management process utilized in 2007.

I do not see the need for a control date to address the mid-water/pair trawl fishery per se, which to date has not targeted Atlantic menhaden, but since the gear could be used, as an alternative to purse seining, to harvest Atlantic menhaden, it makes sense to lump them together for now and establish a control date that applies to both gear types.

Accordingly, *please enact a December 31, 2007 control date for the purse seine and mid-water/pair trawl fisheries.*

Lobsters

Given the advance in discussions at the ASMFC on the transferability of trap effort, we are likely to implement the transfer component of the lobster trap allocation program at some point during 2008, it is important to have a provision in place that will allow transfer recipients to obtain a license so they can fish their acquired traps. I recognize that the original licensing proposal, which sought to split the lobster endorsement into separate trap and non-trap gear categories for all current and future license holders, went farther than we need to go, and I appreciate the input provided at the public hearing, which drove home that point.

At the Council meeting, there was lingering concern expressed that if someone obtained a trap allocation, and then obtained a license, and then sold their allocation, the license would remain in place and potentially cause effort to grow via a mobile gear fishery. The Council therefore voted to go forward with the lobster *trap* endorsement provision for all new allocation recipients. However, as you point out in your memo, and as underscored by a number of comments made at the hearing, the definition of “trap” needs additional consideration, and possibly a regulatory clarification. Thus, I concur with your recommendation not to enact a trap gear endorsement at this time, but rather to retain the existing Lobster (fishery sector) endorsement, and make it available to all allocation recipients.

I do recognize the need to address the mobile-gear concern raised at the Council meeting, however, and thus *I call for adoption of a regulatory provision that provides for the issuance of a PEL with Lobster endorsement to anyone who obtains a trap allocation (upon a showing of acceptable documents of proof), with the caveat that if/when the allocation is transferred, the originating endorsement (and license, if singularly endorsed) will be automatically rescinded.* We can further expound on this provision when we finalize the transfer regulations, but for now I ask that it be folded into the licensing regulations as stated.

I would add that the above provision, allowing for the issuance of a license to qualified applicants, needs to be *applicable year-round*, i.e., not constrained by the annual application deadlines.

Finally, I concur with your recommendation, and that of the Council, to *repeal the 100-pot basic gear and harvest level, since it is no longer germane to the lobster management program.* As a corollary, the definition of Lobster endorsement, which applies equally to holders of CFLs and PELs, needs to be clarified so that it enables the holder to fish any/all traps authorized and specified by their trap allocation; or, if no trap allocation is held, to harvest lobster pursuant to the non-trap landing limits.

Issuance of New Licenses Upon Sale of Vessel and Gear

I concur with your recommendation to clarify that provisions of section 6.7-8 of the regulations apply to residents only. I note that this is a technical adjustment, necessary to render the regulation consistent with statute. I further note that there were no public comments offered at hearing, or by the Council, regarding this issue.