



RHODE ISLAND
DEPARTMENT OF ENVIRONMENTAL
MANAGEMENT

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To: Mark Gibson
Acting Chief, DFW

From: W. Michael Sullivan
Director

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

Date: January 25, 2009

Re: Decision on November 13, 2008 Marine Fisheries Public Hearing Item –
Summer Flounder Sector Allocation Pilot Program

I am writing in response to your December 3, 2008 memorandum regarding the regulatory proposals presented at the November 13, 2008 public hearing. In a prior memo, I conveyed my decisions on all of the public hearing items except the proposal to establish a Summer Flounder Sector Allocation Pilot Program. I deferred on that issue at that time because I wanted to allow more time to fully consider the entire record, which included the minutes of the 9/17/08 summer flounder advisory panel, the extensive comments offered at the 11/13/08 public hearing, and the minutes of the 12/1/08 Marine Fisheries Council meeting. Having now completed my review, I am hereby announcing my decision to move forward with a modified version of the pilot program.

I recognize that there was considerable opposition to the proposal expressed at hearing. And I further recognize that on a 4-3 vote, the Council recommended postponing implementation of the program for at least one year. I deeply respect the perspectives and concerns offered by the public and the position taken by the Council. This was, and is, a very challenging issue, and I know that a lot of people put a lot of time and thought into the review process. Indeed, the record furnished many useful insights into how the proposal could be modified to better meet the broad interests of the State's fishermen and the public as a whole.

The rationale for my decision is set forth below. This memo is being transmitted along with two attachments: 1) an itemized summary of the key programmatic elements; and 2) a final, revised set of regulations for implementing the program. Please take the steps necessary to file the final regulations with Secretary of State's Office as soon as possible, and pursuant to the regulations and this memo, please prepare to administer the program over the next eleven months.

Problem statement. Our traditional fisheries management programs are not working as well as they could, or should. This is particularly true with regard to traditional quota management. While we are able to meet a basic biological objective by limiting the total amount of fish landed on a yearly basis, the process we use to achieve that – daily and weekly trip limits – causes major economic inefficiencies, encourages unsafe fishing activities, and induces ecological harm. The fish are there to catch, but the complexity and short-sighted nature of the current system make it extremely difficult for fishermen to harvest in a way that maximizes profits, to leave port only when it is safe to do so, and to avoid the awful practice of discarding at sea tons of dead fish. What’s more, pending developments at the federal level are going to make an already bad situation even worse, as new measures aimed at controlling overfishing will impose further restrictions on fishermen operating under the current system. It is clear to me that the long-term health and sustainability of our fishermen, and the fishery resources they depend on, cannot be achieved under the current system.

Improving management via new initiatives. The State’s marine fishery resources, and the people who depend on them, are a top State, and personal, priority. I am deeply committed to improving the current system, and I am willing to take the steps necessary to help make that happen. As the State’s lead fisheries management agency, DEM must demonstrate the foresight and courage to engage promising new strategies.

Statutory guidance and support. The RI General Laws vest broad authority upon me as Director to utilize a range of management techniques to properly manage the State’s marine fishery resources. The use of quotas is already well established and, we have already enacted measures akin to sector allocations with regard to set-asides for the fish trap sector. So there is firm legal footing, as well as precedent, for the proposal at hand.

From a broad policy perspective, the RI General Laws provide strong support for giving new approaches a try, particularly those approaches that are reform-oriented, sprung from innovative thinking, and rooted in sound science. Many years ago, when the RI General Assembly first adopted Title 20 (Fish and Wildlife), the legislature set forth, as a core, guiding principle, the following finding:

The State’s fish and wildlife resources, including its marine fishery resources, are “precious, renewable, natural resources of the state” that are to be “developed, preserved, and maintained [by means of] enlightened management techniques [and] ... modern scientific techniques.” (RIGL 20-1-1(a)(b))

In 2002, the RI General Assembly took a hard look at RI’s programs for marine fisheries management and found that they “need[ed] to be brought up-to-date and made adaptable to changing conditions and circumstances.” (RIGL 20-2.1-1(7)) In a clear expression of legislative policy and intent, DEM was charged with “establish[ing] principles, for a system of adaptive management, that shall be used by the department in licensure programs and fisheries management.” (RIGL 20-2.1-2(6)) DEM responded by promulgating regulations that included a first-ever codification of the term “adaptive management” in state rule:

“A formal process for continually improving management policies and practices by learning from their outcomes. As applied to marine fisheries management in Rhode Island, this process will be characterized by rigorous and ongoing analysis of stakeholder values and objectives regarding the fisheries; explicit recognition of uncertainty in the decision-making process; where feasible, modeling of management options and testing of models prior to significant management; and direct feedback between management

initiatives or practices and policy development. (RIDEM, Rules and Regulations Governing the Management of Marine Fisheries, Rule 5.3)

I view the proposed sector allocation pilot program as a vivid illustration of what the General Assembly had in mind when it called upon DEM to modernize the State's management programs via an adaptive approach. The pilot program is designed to test the viability of a rights-based, catch-share approach to management, an approach that is increasingly being viewed as a promising solution to the vexing problems associated with traditional fisheries governance. (I note in particular recent research published in the journals *Science* and *Nature* showing that catch shares can stop, and even reverse, the collapse of fisheries while increasing the number of fish that can be caught and bolstering local economies.) I feel that it would be inconsistent with legislative policy if we neglected to give this enlightened, scientifically based approach a test run in Rhode Island.

Pilot program vs. fishery-wide program. Across the globe and in many portions of the United States, there is increasing focus on catch-share strategies as a sound alternative to traditional management techniques. However, the concept has never been employed in RI and is in its infancy in the region. The New England Council has given a lot of thought to sectors and appears ready to move forward with several in 2010. To my knowledge, catch-share strategies have yet to be employed by any other state in the region.

Given the newness of the strategy, it must be carefully developed, closely monitored, fully documented, and thoroughly evaluated if it is to be employed. That is difficult to do on a large-scale basis. Even after attempting to consider and address all the nuances of the program, issues and problems will inevitably arise once fishing activities commence. Such issues and problems may not be identifiable via a desktop exercise. We need an experimental trial run with real field experience to be able to differentiate between what works and what doesn't, and to identify the bugs in the system and try to fix them before they morph into large problems. If we do things carefully, we stand a reasonable chance of developing a program that works. Alternatively, we might find that the approach is unworkable or does not produce the desired outcome, in which case we might need to abandon the concept -- but having taken only a short, small, and temporary step, we will have lost little in the process. Indeed, if we try too large an experiment -- that is, if we attempt to move forward too soon on too big a scale -- we could turn a potentially good idea into a bad one, or cause a bad idea to become disastrous. I am unwilling to take that chance. I am convinced that the idea of sectors has promise, but the approach first needs to be piloted, on an appropriate scale, so that we can better understand its potential value and better assess its many implications, pro or con.

While I am convinced that there is merit in moving ahead with a small-scale pilot program, I am sensitive to the interests and concerns of those fishermen who would not be part of the pilot program. I recognize that there are some who feel that a move toward sectors is not in their interest. I also recognize that there are others who feel that sectors might make sense, as long as a wide range of fishermen have an opportunity to participate. And of course all would agree that the devil is always in the details -- i.e., how allocations are made, when and where sectors can harvest, how those with little or no history can obtain shares, etc. So it's clear to me that no one is ready to endorse a program of any sort without first understanding how it will work and what it will mean.

Given the valid interests and concerns of those fishermen who would not be part of a pilot program, and given that the sole intent of the pilot program is to see if it is workable and beneficial to the fishery as a whole and, if so, to consider its implementation on a broad basis, I

hereby declare my intent to move forward, simultaneously, on two fronts: 1) the implementation of a relatively small-scale, experimental pilot program to assess the value and implications of a sector allocation program for summer flounder in RI; and 2) the development of a broad-based sector allocation program for the summer flounder fishery as a whole, drawing upon the insights gained through the pilot program and the perspectives of all who would be affected. It is essential to move forward on both fronts quickly, since I believe that we will need all of next fall to fully review this experiment and vet any proposal for a broader-based program through the Marine Fisheries Council and public hearing processes. Again, the point of this two-part strategy is to see if the program is workable and beneficial to a wide range of RI fishermen, and the public as a whole. I am optimistic about those prospects, but I am also realistic about the possibility that the program might not work or might not have wide-ranging benefits, in which case the idea will likely get shelved. If we do end up abandoning the cause, then so be it; but I will insist that any such decision be based on facts, rather than fear of the unknown.

Pilot program participants. The Department had proposed an RFP-type pilot program, whereby any group of qualified fishermen could apply to participate. Yet throughout the many hours of public discussions that took place on the proposal, no individual or group, other than the RI Fluke Conservation Cooperative (RIFCC), indicated that they would have the time, interest, or ability to form a sector -- as per the various contractual and administrative requirements -- and seek participation in the pilot program for 2009. Accordingly, while I remain willing to consider an application from any group at any time, and hereby declare that the window to apply for participation will remain open throughout the year, I recognize that there may be only one group poised to participate in the program at this time. I do not view that as a problem or shortcoming. I am prepared to move forward with any group, or groups, of fishermen that is/are ready to meet the terms and conditions of the pilot program.

Portion of quota dedicated to pilot program. The fairest and most appropriate way to determine how much of the State's quota for the commercial summer flounder fishery should be dedicated to the sector allocation pilot program is to determine the average amount of summer flounder (as a percentage of the State quota) harvested by the program participants over the past few years, apply that percentage to the State's quota for 2009, subtract the total pounds of summer flounder landed by the participating vessels between January 1, 2009 and the day the program begins, and calculate a final figure for the 10+ month period running through December 2009. In essence, this approach makes available to the program participants the same amount of fish that they would otherwise likely harvest if not participating in the pilot. A five-year period is, in my opinion, a fair and reasonable period to use for determining the average annual amount of summer flounder harvested by the program participants. I hereby declare my intent to use this approach to calculate the amount of fish that will be dedicated to the pilot program.

Upon receipt of an application to participate in the pilot program, please verify the reported landings by the participating vessels during the 2004-2008 period. Please also determine the total landings by all participating vessels to date this year. I will not support moving forward with the program unless and until you are able to verify the reported landings utilizing the best available information. I am committed to public disclosure of the exact poundage that will be dedicated to the pilot program, once you have determined that amount based on the above-described calculations.

Monitoring and enforcement. It is essential to monitor the pilot program carefully, both to ensure compliance and to assess its strengths and weaknesses. My willingness to support the program is linked to my confidence in the SAFIS reporting system, which will enable us to closely track and report the landings of the participants on a regular basis throughout the 10+

month period. I recognize that the Department has the ability to do this on our own, outside of public view; but I also feel that this program should be made as transparent as possible, so that everyone can track its progress and understand how it is working, thereby facilitating informed decisions about the possibility of broadened participation in an expanded program. While the Department is typically not at liberty to publicly reveal landings made by individual vessels, I hereby declare my intent to require all participating vessels, as one of the terms and conditions associated with their participation in the program, to agree to have their landings of summer flounder posted on our website on a per-vessel, weekly basis throughout 2009.

All participants in the pilot program must also utilize detailed tracking sheets, with single-vessel resolution, in a format approved by your office, to account for all landings and discards. The sector manager shall be responsible for maintaining these records and providing them to your office on a weekly basis throughout the year, in a form and in a manner of your choosing. I hereby commit to making these reports available for public review, following their submittal to your office.

Because the program will also require participants to retain and land all legal-sized fluke harvested during all sector-related fishing operations, and to refrain from fishing with gear that is capable of catching summer flounder within one mile of the RI coast during the summer months and in all waters once the full quota dedicated to the program has been harvested, a high level of observer coverage is necessary throughout the year to gauge compliance with those and all other terms and conditions. I have sought the involvement of a team of experts to analyze the projected fishing trips that are likely to be taken by the participating vessels and develop a protocol for monitoring coverage that will afford proper oversight of at-sea activities. I hereby declare my intent to require the participating vessels, as one of the terms and conditions associated with their participation in the program, to agree to host observers on their vessels for as many trips as the Department deems necessary, with all observer-related costs to be borne by the sector. I further commit to making all reports furnished by the observers available for public review. Please complete the development of the monitoring protocol for the program and include it as part of the agreement to be signed with the participants.

I recognize that the most meaningful way to assess the sector program is to monitor both sector and non-sector participants for purposes of comparison. I will work with you over the next several weeks to try to identify and secure funds for the purpose of providing observers for non-sector participants who are willing to host observers. I view this non-sector monitoring issue as important, but not a requisite component of the pilot program. If we are unable to support a comparative analysis of sector and non-sector activities this year via observers, the pilot program should still move forward, with an appropriate level of observer coverage as set forth in the preceding paragraph.

While the Department recently repealed the mandatory call-in requirement for commercial summer flounder fishermen, I hereby declare my intent to re-instate the requirement for the vessels participating in the pilot program, and make it applicable to each and every trip that they make throughout 2009, regardless of whether the trip targets or lands summer flounder. Each of the participating vessels, on each and every trip that they make during 2009, must notify DEM's Office of Law Enforcement prior to entering any RI port to off-load fish.

Summer inshore fishery. I am aware of the deep concern, expressed by many at the public hearing, that the pilot program could impact the inshore summer flounder fishery, commercial and recreational, during the summer months. That concern appears to be based largely on two perceived threats. The first is that those sector participants who typically land the majority of

their summer flounder during the winter and fall sub-periods will shift their activities and fish more heavily during the summer sub-period, unbound by the 100 and 50 pounds/day possession limits; and, in doing so, the sector participants will utilize a greater share of the summer sub-period quota than they have in past years, and perhaps also exert downward pressure on market prices, thereby impacting inshore commercial fishermen, who rely on the summer sub-period quota and a steady market to support their summer fishery. The second threat is that the sector participants will not only shift their activities seasonally, but also geographically, targeting inshore waters in order to save operating expenses; in so doing, the sector participants will further impact the inshore summer flounder fisheries via localized depletions and user group conflicts.

I believe that the above-noted concerns are valid, and while it is not the intent of the program to shift effort in a way that would significantly affect the summer inshore fisheries, I am prepared to institute some safeguards to help protect the interests of non-sector participants who rely upon the inshore summer fishery.

The first such safeguard is to prohibit targeted activities by the participating vessels within one mile of the southern RI coastline between June 1 and September 30. This was a key provision in the proposal that went out to notice and hearing, and I hereby declare my intent to adopt it. As proposed, and now as adopted, the provision will not preclude all commercial fishing activities by sector participants within the prohibited area during the four-month period, but it will prohibit the deployment of gear that is intended to capture summer flounder in those waters during that time.

The second safeguard is to cap the summer sub-period landings by the sector participants. While I recognize that this control runs counter to the core philosophy of a sector allocation program, which is to afford fishermen the flexibility necessary to make sound business decisions and minimize regulatory discards, I cannot let the pilot program move forward without some degree of assurance that the interests of non-participants will be protected.

I feel that the fairest and most appropriate way to institute a summer sub-period cap for the pilot program participants is to establish a limit that reflects the maximum amount of summer flounder that the program participants would otherwise have been eligible to harvest if operating under the existing management program. I have estimated that maximum amount to be 7,500 pounds per vessel for the entire summer sub-period, beginning May 1 and running through October 31. While it could be argued that the landings by sector participants during the summer sub-period should be further controlled by daily or monthly limits, I am determined to afford them as much flexibility as possible, and I have no reason to believe that they would see fit to flood the market with product at any given point in time, since that would not be in keeping with their harvest strategies and would adversely impact them as much as all other fishermen via downward pressure on prices.

Control date. As previously noted, the intent of the experimental pilot program is to see if it is workable and beneficial to the overall fishery, in whole or part. I am therefore committed to moving forward not only with the pilot program, but also with the simultaneous development of a broader-based sector allocation program for a larger segment of the fishery, if not the fishery in its entirety. If a broader based program does emerge as a viable proposal, it might draw upon the historical landings of individual sector participants as a primary basis for establishing individual sector allocations. In view of the importance of giving all relevant license holders advance notice of such a possibility and, by so doing, to enable all such license holders to engage or increase participation in the summer flounder fishery during 2009 to possibly better position themselves for participation in a sector allocation program in 2010, if one is adopted, I hereby declare my

intent to establish a prospective control date of December 31, 2009 for the commercial summer flounder fishery.

tonnage (GRT) or net tonnage (NT), or a 20 percent increase in horsepower of the vessel's baseline specifications, as applicable.

(5) Vessel baseline specifications: The vessel baseline specifications in this section are the respective specifications (length, gross registered tonnage, net tonnage, horsepower) of the vessel that was initially issued a Certificate of Exemption.

(6) A vessel may be upgraded, whether through refitting or replacement, and be eligible to retain a Certificate of Exemption, only if the upgrade complies with the following:

- i. The vessel's horsepower may be increased only once, whether through refitting or replacement. Such an increase may not exceed 20 percent of the horsepower of the vessel's baseline specifications, as applicable.
- ii. The vessel's length, GRT, and NT may be increased only once, whether through refitting or replacement. Any increase in any of these three specifications of vessel size may not exceed 10 percent of the vessel's baseline specifications, as applicable. If any of these three specifications is increased, any increase in the other two must be performed at the same time. This type of upgrade may be done separately from an engine horsepower upgrade.

(c) Certificates of Exemption or permits may not be:

- (1) pledged, mortgaged, leased, or encumbered in any way;
- (2) transferred with any retained right of repossession or foreclosure, or any condition requiring a subsequent transfer; or
- (3) attached, distrained, or sold on execution of judgment.

(RIMF REGULATION) [Penalty – Part 3.3; (RIGL 20-3-3)]

7.7.11 Research Set Aside

A portion of the State's summer flounder quota for 2009 will be allocated to a one-year sector allocation pilot program. The purpose of the program will be to assess the effectiveness and viability of a rights-based approach as an alternative to traditional quota management in the commercial summer flounder fishery. The Department will undertake the assessment by carefully monitoring the program throughout the course of 2009, evaluating the short-term and potential long-term impacts of the program, including the impacts to non-participating licensed fishermen and prospective future license holders, and determining the extent to which the program meets the goals, principles and standards for marine fisheries management in Rhode Island, as set forth in the RI General Laws. The Department will provide weekly

public updates of all landings made pursuant to the program; provide monthly updates on the program to the RI Marine Fisheries Council; report preliminary assessment findings to the Council no later than October 1, 2009; and issue a final report to the Council no later than November 1, 2009.

Participants in the program will be authorized to commercially harvest and land summer flounder in Rhode Island in any amount, up to the amount of the research set aside and the sector allocation(s) established pursuant thereto, at any time of the year, until the research set aside and the sector allocation(s) established pursuant thereto are fully harvested; provided, however, that a total allowable catch limit will be established for the summer sub-period (May 1 through October 31). Participants will not be bound by daily or weekly possession limits, nor will participants be bound by sub-period closures. Participants will be prohibited from discarding any summer flounder, or parts thereof, that are fourteen (14) inches or greater in total length while engaged in the program. Participants will also be required to meet all other terms and conditions of the program, as set forth below.

The research set aside will involve an aggregate allocation for each approved sector. Each allocation will involve a “hard” total allowable catch (TAC), i.e., a specific and definitive amount of summer flounder, constituting the maximum aggregate amount of summer flounder that may be harvested by the participants in each sector. Any discards of legal-sized fish will be deducted from the TAC.

The program may involve one or more qualified sectors, and each sector may involve any number of qualified participants. If no sector becomes qualified for participation in the pilot program, there will no research set aside for 2009.

7.7.11-1 Participants

Anyone may be deemed eligible to participate in the pilot program, provided they meet the following requirements:

- a. A participant must be the owner and operator of a vessel that is licensed to harvest summer flounder in federal waters, and must remain so licensed in 2009. In addition, a participant must hold a RI license or landing permit allowing for the landing of summer flounder in RI, and must remain so licensed or permitted in 2009. In addition, a participant must be the owner and operator of a vessel that holds a RI summer flounder exemption certificate, and must remain so permitted in 2009.
- b. A participant must not have been assessed a criminal or administrative

penalty in the past three years for a violation of any state or federal law or regulation relating to marine fisheries.

c. Participants must be formally organized as a sector, and each sector must meet all of the requirements set forth below.

7.7.11-2 Sectors

Any group of qualified participants may form a sector and apply for participation in the pilot program, provided the following requirements are met:

a. Each prospective sector must submit a Proposal to the Division, describing the group's intent relative to participation in the pilot program.

b. Each prospective sector must submit a fully executed Sector Contract to the Division. The Sector Contract must be signed by all participants, and must bind them to the terms and conditions of the Operations Plan. The Contract must hold the Sector and all participants in the sector jointly and severally liable for any violations of applicable State or Federal fishery laws and regulations for which any participant of that Sector has been found culpable by a duly authorized governmental entity.

c. Each prospective sector must submit an Operations Plan to the Division. The Operations Plan must contain at least the following elements:

1. A roster of all parties, vessels, license/permit holders, and vessel owners who will participate in the sector. The roster shall include all relevant information relating to the license and/or permit history of the participants, as well as verifiable data on the commercial landings of summer flounder in RI for each vessel, dating back for a period of five (5) calendar years.

2. An acceptable plan detailing the rules the sector participants will agree to abide by in order to avoid exceeding the sector allocation (TAC), including detailed plans for enforcement of the Sector rules, as well as detailed plans for the monitoring and reporting of landings and discards. If applicable, the plan must describe whether the sector allocation will be sub-allocated to individual participants and, if so, in what amounts or percentages.

3. The name of, and contact information for, the Sector Manager, who will act as a designated agent for service of process and serve as

overseer of the day-to-day operations of the sector.

7.7.11-3 Approval of Pilot Program Sectors by the Director

a. Evaluation criteria -- All proposals submitted to the Division will be reviewed and assessed by the Director in accordance with the following evaluation criteria:

- 1. Completeness – Does the proposal include a full description of the group’s intent relative to participation in the pilot program? Does the proposal include a fully executed Sector Contract that comports with sub-section 7.7.11-2(b)? Does the proposal include an Operations Plan that meets all of the requirements set forth in sub-section 7.7.11-2(c)?**
- 2. Accuracy – Are the license/permit histories and the landings data provided in the proposal verifiable and accurate?**
- 3. Enforcement history – Have there been any criminal or administrative penalties assessed within the past three years on any participant associated with the proposal?**
- 4. Landings History – For how long, and in what amounts, have the proposed participants commercially landed summer flounder in Rhode Island?**
- 5. Clarity and strength – Is the Operations Plan well developed and likely to provide for strong and effective management and control of the sector and its operations?**
- 6. Fishery management goals – Is the proposal likely to contribute substantively and meaningfully to reductions in bycatch mortality, improved economic efficiency, sustainability, and safety at sea? Is the proposal likely to furnish quality data, information, and insight that will enable the Department to (i) assess the effectiveness and viability of a rights-based approach as an alternative to traditional quota management in the commercial summer flounder fishery, and (ii) determine the extent to which a sector-allocation program meets the goals, principles and standards for marine fisheries management in Rhode Island, as set forth in the RI General Laws?**
- 7. Broad-based applicability and benefit – Is the proposal likely to furnish data, information, and insight that can be applied beneficially to other Rhode Island-based fishers, fisheries, and gear types in future years?**

b. Final decision – Based on the Director’s review of proposals undertaken pursuant to subsection (a) above, the Director shall select one or more sectors for participation in the pilot program. The selection will be announced publicly as soon as it is made, and the announcement shall include the names of all participating vessels and/or license/permit holders, and the allocation (TAC) assigned to the sector(s). If the Director finds that no sector is qualified for participation in the pilot program, there will no pilot program for 2009.

7.7.11-4 Determination of Sector Allocations and Research Set Aside

The Director will calculate the amount of the individual sector allocations as follows:

For each approved sector, the Director will sum the total commercial landings of summer flounder in Rhode Island for each and all participating vessels during each and all of the five years, 2004-2008, and label it “total sector catch.” The Director will then determine the total commercial landings of summer flounder in Rhode Island by all commercial fishermen over the same 2004-2008 period and label it “total state catch.” The Director will divide the total sector catch by the total state catch to derive a final fractional share, reflecting the portion of the state summer flounder catch harvested by the participating vessels over the five-year period, 2004-2008.

Final adjusted sector allocations for pilot program: For each approved sector, the final adjusted allocation for the pilot program will be determined by applying the final fractional share for the sector to the State’s overall summer flounder quota for 2009, and then subtracting from that amount the total amount of summer flounder landed commercially by the sector participants from January 1, 2009 until the date of the Director’s final decision per sub-section 7.7.11-3(b).

The Director will calculate the amount of the research set aside as follows:

If more than one sector is approved for the pilot program, the final adjusted sector allocations for each approved sector will be added. The sum total will constitute the amount of the research set aside for 2009. If only one sector is approved for the pilot program, the final adjusted sector allocation for that sector will constitute the amount of the research set aside for 2009.

7.7.11-5 Program Implementation – Terms and Conditions

a. All sectors must utilize detailed tracking sheets, with single-vessel resolution, in a format pre-approved by the Division, to account for all landings and discards by all sector participants throughout the course of the program. Each sector manager shall be responsible for maintaining these records and providing them to the Division in a form and manner prescribed by the Division on a weekly basis throughout the year. Each sector manager shall notify the Division no later than forty-eight (48) hours after seventy-five percent (75%) of the sector allocation has been harvested, and then again no later than forty-eight (48) hours after ninety percent (90%) of the sector allocation has been harvested. All trip monitoring and reporting costs shall be borne by each sector, through the sector manager.

b. All sectors must allow the Department to publicly disclose all landings of summer flounder made by all participating vessels, on a single-vessel resolution basis.

c. All participating vessels must agree to take any state or federally authorized observers at any time. Each sector, through the sector manager(s), must fund the full costs of any and all observer coverage requested or required by the Division or the National Marine Fisheries Service.

d. All participating vessels must notify the DEM's Division of Law Enforcement (401-222-2284 or 222-3070) at least one hour prior, but not more than six hours prior, to all commercial landings in Rhode Island, regardless of whether or not such landings include summer flounder.

e. All legal-sized fluke harvested during any and all sector-related fishing operations must be retained, landed, and counted against the sector allocation. All summer flounder discarded due to damage rendering the fish unsellable or sub-legal size must also be counted against each sector allocation.

f. No vessel participating in the program shall fish commercially with gear that is capable of catching summer flounder, between June 1, 2009 and September 30, 2009 within one mile seaward of the southern Rhode Island coastline. This baseline is further defined as the shoreline running from Watch Hill to Point Judith, the mouth of Narragansett Bay running from Point Judith to Brenton Point, the south shore of Aquidneck Island, the mouth of the Sakonnet River running from Sachuest Point to Sakonnet Point, and the south shore of Little Compton to the Massachusetts state line.

g. A total allowable catch (TAC) limit will be established for the summer sub-period, beginning May 1 and continuing through October 31. The TAC shall be calculated as follows:

For each vessel participating in each sector, a summer sub-period allocation of 7,500 pounds is established. For each sector, the summer sub-period TAC shall be 7,500 pounds multiplied by the number of vessels participating in the sector.

h. Once a sector's allocation is met, sector operations will be terminated for the remainder of the year, and no vessel participating in the program, nor any licensed individual associated with such vessel, shall fish commercially with gear that is capable of catching summer flounder for the remainder of the year.

i. Once a sector's summer sub-period TAC is met, sector operations will be terminated for the remainder of the summer sub-period, i.e., until October 31, and no vessel participating in the program, nor any licensed individual associated with such vessel, shall fish commercially with gear that is capable of catching summer flounder for the remainder of the summer sub-period.

j. Participating vessels must remain in the sector and abide by the terms and conditions of the sector throughout 2009. Any vessel that drops out of, or is expelled from, a sector will be prohibited from harvesting and landing summer flounder for the duration of 2009. The sector manager shall notify the Division no later than forty-eight (48) hours after any vessel drops out of, or is expelled from, a sector.

k. All license/permit holders and vessels participating in the sector allocation pilot program must adhere to all applicable rules and regulations governing commercial fishing operations, other than those set forth in section 7.7.1, including but not limited to mesh size restrictions, offloading hours, at-sea transfers, and reporting and record-keeping requirements. All license/permit holders and participating vessels will be subject to all State and Federal small mesh landing levels for summer flounder when fishing with small mesh. All license/permit holders and participating vessels will be allowed to fish south of the Southern New England DDAS counting area for summer flounder when properly enrolled in the Small Mesh Exemption Program.

l. The authorization to participate in the pilot program is non-transferable. Only vessels authorized by the Director may participate in the pilot program during 2009.

m. It shall be the responsibility of each sector manager to oversee the day-to-day operations of the sector, ensure compliance with all of the terms and conditions governing the sector, as set forth in these rules and regulations, and as detailed in the Sector Contract and Sector Operations Plan, and to serve as the primary point of contact with the Division.

7.7.11-6 Enforcement

If a sector exceeds its allocation, or if one or more participating vessels is found to be in violation of any of the terms and conditions set forth in these regulations, the sector will be declared null and void due to breach of contract and all participating vessels and license/permit holders will be subject to potential enforcement action, including but not limited to: confiscation of catch, prohibition on the harvest and landing of summer flounder for the remainder of the year, license and/or permit suspension or revocation, fines, and disqualification from participation in any future alternative management programs. All penalty provisions applicable to violations of marine fisheries laws and regulations will also be applicable to participants in the sector allocation pilot program.

7.7.11-7 Control Date

A control date of December 31, 2009 is established for the commercial summer flounder fishery in Rhode Island.

7.8 Winter Flounder (Blackback) -- No person shall take possess, sell, possess for sale, or offer for sale any winter flounder measuring less than twelve (12) inches total length whether caught within the jurisdiction of this State or otherwise. During a closure of the R.I. winter flounder fishery a vessel fishing in the Exclusive Economic Zone (EEZ) may traverse Rhode Island waters for the purpose of landing winter flounder provided they are not fishing and nets are stowed in accordance with Section 10.10 of these regulations.

7.8.1 Winter Flounder - Four fish recreational possession limit -- The taking and/or possession of winter flounder by recreational fishermen is prohibited with the exception that annually, beginning on the fourth Saturday in April and continuing for 30 days, and beginning on the last Saturday in September and continuing for 30 days, fishermen may take and possess not more than four (4) winter flounder in Rhode Island waters. Said fish shall not be offered for sale. The four fish possession limit shall not apply to fishermen licensed pursuant to RIGL 20-2-26, 20-2-27, 20-2-28, or 20-2-28.1, provided winter flounder possessed by those licensed in the above sections are harvested in compliance with R.I. Marine Fisheries Council Statutes and Regulations.