



RHODE ISLAND
DEPARTMENT OF ENVIRONMENTAL MANAGEMENT

OFFICE OF THE DIRECTOR
235 Promenade Street, Room 425
Providence, Rhode Island 02908

To: Jason McNamee
Chief, Marine Resource Management

From: Janet Coit
Director

Date: December 4, 2019

Re: Final Decisions Pertaining to the November 12, 2019 Marine Fisheries Public Hearing Items

I have received and reviewed your memo to me, dated December 3, 2019, and attached herewith, regarding the public hearing items from the November 12, 2019 public hearing. I have also received and reviewed all relevant supporting documentation, including the public hearing documents and the summary report (draft meeting minutes) from the December 2, 2019 meeting of the RI Marine Fisheries Council (Council).

I hereby approve all the Council recommendations, as set forth in your memo, which are also supported by the Division. The specific regulatory items, and the final decisions for each, are as follows:

1. **Remove provision that specifies quota management for tautog overharvest, as the summer subperiod referenced no longer exists in rule**
 - Decision: Amend the rule as noticed and recommended by the Council, which removes the language regarding harvest overages for tautog consistent with management of other quota monitored species.
2. **Establish rule for high grading prohibition:**
 - Decision: Do not adopt this provision at this time. If any new insight to ensure that the enforceability of this regulation can be less subjective, I direct the Division to reintroduce the rule into the public process. In the meantime, I direct the Division to work with my communications staff on doing outreach with the fishing community to support best practices with regard to handling and discarding fish.

3. 2020 Commercial Management of Black Sea Bass

- Decision: Maintain regulatory status quo as recommended by the Council.

4. 2020 Commercial Management of Scup

- Decision: Maintain regulatory status quo as recommended by the Council.

5. 2020 Commercial Management of Summer Flounder

- Decision: Amend the rule as recommended by the Council, which will open the Aggregate Landing Program one month earlier on the Sunday of the first full week in January, change the starting aggregate possession limit in the Jan. 1 – April 30 sub-period from 1,500 lbs/vsl/bi-week to 1,000 lbs/vsl/week, and increase the starting possession limit in the May 1 –Sept. 15 sub-period from 50 lbs/day to 100 lbs/day.

6. 2020 Commercial Management of Bluefish

- Decision: Amend the rule as noticed and recommended by the Council, which increases the minimum size from 12 to 18 inches, and decreases the starting possession limit in the May-November sub-period from 8,000 to 6,000 lbs/vessel/week.

7. 2020 Commercial Management of Menhaden

- Decision: Maintain regulatory status quo as recommended by the Council.

8. Prohibition of Ocean pout in state waters

- Decision: Adopt the new provision as noticed and recommended by the Council, which prohibits the harvest, possession and landing of Ocean pout in state waters consistent with the Fisheries Management Plan (FMP) for this species.

9. Proposed prohibition of Atlantic wolffish in state waters

- Decision: Adopt the new provision as noticed and recommended by the Council, which prohibits the harvest, possession and landing of Atlantic wolffish in state waters consistent with the Fisheries Management Plan (FMP) for this species.

10. Continuation of “Part 12 - Research Pilot Aggregate Program” regulations

- Decision: Amend the rule as noticed and recommended by the Council, which continues the program through 2021, expands the number of participating vessels in the program from three to six per gear category, amends the application period to January 1 through March 30 annually, and amends the eligibility requirement for the historical record of landing summer flounder from five years to one year. I note that this was a split vote by the RIMFC. The record of the meeting does not offer a clear

reason as to why some on the Council rejected the modifications posed, so it is unclear to me as to how we might alter these modifications to assuage some of their concerns. Despite any overt reasons offered for the votes to reject, I direct the Division to closely monitor the catch rates so that early closures are not incurred due to the expansion of the program, as I believe this may have been one of the areas of concern. I further direct the Division to explore the feasibility and funding sources for an economic analysis for the purpose of assessing the economic feasibility of the program, consistent with the Council's recommendation.

11. Proposed new adoption “Part 13 - Cooperative Multi-State Possession and Landing Pilot Program for Summer Flounder”

- Decision: Adopt the rule as noticed and recommended by the Council, which authorizes commercial fishers to simultaneously carry possession limits for, and land, summer flounder in cooperating states during the same fishing trip during the winter 1 sub period.

12. Proposed adoption of a whelk pot tagging program

- Decision: Adopt the rule as recommended by the Council, which establishes a whelk pot tagging program designed to manage compliance with the pot limit established in rule, provides for 15% routine loss of tags, and establishes valid dates of tags from April 1 – March 31.



RHODE ISLAND
DEPARTMENT OF ENVIRONMENTAL MANAGEMENT

DIVISION OF MARINE FISHERIES
Three Fort Wetherill Road
Jamestown, Rhode Island 02835

INTER-OFFICE MEMO

TO: Janet Coit, Director

FROM: Jason McNamee, Chief *JEM*

DATE: December 3, 2019

SUBJECT: Decisions regarding proposed amendments to the RI Marine Fisheries regulations that were the subject of a public hearing conducted on November 12th and RI Marine Fisheries Council (RIMFC) meeting on December 2nd. The public hearing folder contains all the necessary documentation related to this hearing, including a summary of the oral comments made at the hearing, written comments received, the noticed annotated regulations, and public notice.

1. **Remove provision that specifies quota management for tautog overharvest, as the summer subperiod referenced no longer exists in rule (Part 1, section 1.6(A)(1)(b)(2)):**

- **Background:** Rule currently states that overages for tautog will be deducted from the summer sub-period; however, the summer sub-period was removed from rule (earlier in 2019).
- **Proposal:** Division proposal to remove this language from the rule and address overages for tautog in the same manner as all other quota monitored species.
- **Public comments:** Overages in any given sub-period need to be deducted from the same sub-period in the following year.
- **RIMFC:** 7 - 0 in support as proposed.
- **Marine Fisheries:** Support as proposed. In response to the public comment provided, the Division purports that the process in place for all other quota monitored species will now apply to Tautog as well.
- **Timing to file:** Rule must be submitted to ORR for post-hearing review. File immediately upon clearance from ORR.

3. **Establish rule for high grading prohibition (Part 1, section 1.6(H)):**

- **Background:** There is no rule in place that prohibits high-grading. In the past the Division has received requests from recreational anglers to address this in the

striped bass fishery. The Division felt that given the current stock conditions for multiple species, a provision applying to all species may be warranted.

- Proposal: Division proposal to add provision to rule.
- Public comments: Broad lack of support provided from commercial fishermen at the hearing based on confusion of rule and subsequent concern regarding discretionary enforcement of rule.
- RIMFC: 6 – 1 in support of *not* adopting this provision.
- Marine Fisheries: The Division supports the Council recommendation of not adopting the rule at this time. The Division is cognizant of the public comments received and supports further discussion with the Division of Law Enforcement and public to address the concerns expressed. This item will remain in the Division's regulatory queue for continued internal discussion to determine if bringing the matter to hearing again is warranted.
- Timing to file: N/A.

4. **2020 Commercial Management of Black Sea Bass (Part 3, section 3.7.2(A) and (B)):**

- Background: Annual review of management program. The 2020 RI commercial quota expected to increase from 377k lbs to 613k lbs.
- Proposal: No amendments were noticed.
- Public comments: Varied responses received regarding changing the sub-period allocations however the only specific proposal to come forward was to amend the starting possession limit in the Jan. 1 – April 30 sub-period from 500 lbs/wk to 750 lbs/wk.
- RIMFC: 7 – 0 in support of maintaining status quo.
- Marine Fisheries: The Division supports the Council recommendation to maintain status quo and will use its possession limit authority to increase the weekly limit if the catch rates warrant such action in order to fully utilize the sub-period allocation.
- Timing to file: N/A.

4. **2020 Commercial Management of Scup (Part 3, section 3.8.2(A) and (B)):**

- Background: Annual review of management program. The 2020 RI commercial quota is expected to slightly decrease from 2019 (~4.73 m lbs.).
- Proposal: No amendments were noticed.
- Public comments: No comments were received.
- RIMFC: 7 – 0 in support of maintaining status quo.
- Marine Fisheries: The Division supports the Council recommendation to maintain status quo.
- Timing to file: N/A.

5. **2020 Commercial Management of Summer Flounder (Part 3, section 3.10.2):**

- Background: Annual review of management program. RI had a large quota increase in April of 2019, after the annual review of commercial regulations, and

no management changes were filed in 2019 to accommodate the quota increase. The 2020 RI commercial quota expected to be 1.81 m lbs, an increase from 1.72 m lbs in 2019.

- Proposal: Two proposals were submitted by industry:

Proposal 1:

Min. size	Season	Allocation	Starting Poss. limit
14"	Jan. 1 – April 30	54%	<ul style="list-style-type: none"> • 100 lbs/vsl/day; 1,500 <u>2,000</u> lbs/vsl/bi-week for Agg. Landing Program participants. • <u>Open the Summer Flounder Aggregate Landing Program on the Sunday of the first full week in January instead of the Sunday of the first full week in February</u>
	May 1 – Sept. 15	35%	50 <u>100</u> lbs/day
	Sept. 16 – Dec. 31	11%	100 lbs/day

Proposal 2:

Min. size	Season	Allocation	Starting Poss. limit
14"	Jan. 1 – April 30	54%	100 lbs/vsl/day; 1,500 lbs/vsl/bi-week <u>week</u> for Agg. Landing Program participants
	May 1 – Sept. 15	35%	50 <u>100</u> lbs/day
	Sept. 16 – Dec. 31	11%	100 lbs/day

- Public comments: Several comments were made in writing and at the hearing. Comments were generally in support of increasing the May 1 – Sept. 15 starting possession limit from 50 lbs/day to 100 lbs/day. Comments also expressed concern over increasing the Jan. 1 – April 30 aggregate possession limit due to the potential to incur an overage.
- RIMFC: 7 – 0 in support of opening the Summer Flounder Aggregate Landing Program on the Sunday of the first full week in January instead of the Sunday of the first full week in February, increasing the starting possession limit in the Jan. 1 – April 30 sub-period from 1,500 lbs/vsl/bi-week to 1,000 lbs/vsl/week, and increasing the starting possession limit in the May 1 –Sept. 15 sub-period from 50 lbs/day to 100 lbs/day:

Min. size	Season	Allocation	Starting Poss. limit
14"	Jan. 1 – April 30	54%	<ul style="list-style-type: none"> • 100 lbs/vsl/day; 1,500 lbs/vsl/bi-week <u>1,000 lbs/vsl/week</u> for Agg. Landing Program participants

			<ul style="list-style-type: none"> • <u>Open the Summer Flounder Aggregate Landing Program on the Sunday of the first full week in January instead of the Sunday of the first full week in February</u>
	May 1 – Sept. 15	35%	50 <u>100</u> lbs/day
	Sept. 16 – Dec. 31	11%	100 lbs/day

- Marine Fisheries: The Division can manage either of the proposals submitted and the Council recommended modification. While the Division could manage increasing the starting possession limit in the Jan. 1 – April 30 sub-period to 1,500 lbs/vsl/week, this option was not analyzed and may result in early closure of the aggregate program. The Division supports the RIMFC recommendation.
- Timing to file: Immediately.

6. **2020 Commercial Management of Bluefish (Part 3, section 3.18.2):**

- Background: Annual review of the management program. As a result of the updated stock assessment, the recreational fishery is anticipated to exceed the Recreational Harvest Limit (RHL) in 2020. As a result, there will be no quota transfer from the recreational fishery to the commercial fishery in 2020. This will result in a large reduction to RI's final 2020 quota.
- Proposal: Division proposal to amend the rule in response to reduced quota:

Min. size	Sub-period	Poss. Limit
12 18"	Jan. 1 – April 30	1,000 lbs/2 wks
	May 1 – 2 nd Sat. in Nov.	8,000 <u>6,000</u> lbs/wk
	2 nd Sun. in Nov. – Dec. 31	500 lbs/wk

- Public comments: Broad support for increase in minimum size as proposed. Support for the decrease in starting possession limit as proposed if necessary to maintain an open season.
- RIMFC: 7 – 0 in support as proposed.
- Marine Fisheries: The Division supports the management plan as proposed in the notice.
- Timing to file: Immediately.

7. **2020 Commercial Management of Menhaden (Part 3, section 3.22.2):**

- Background: Annual review of the management program.
- Proposal: No amendments were noticed.
- Public comments: No comments received.
- RIMFC: 7 – 0 in support of maintaining status quo.

- Marine Fisheries: The Division supports the Council recommendation to maintain status quo.
 - Timing to file: N/A.
8. **Proposed prohibition of Ocean pout in state waters (Part 3, proposed new section 3.32):**
- Background: Proposal syncs state and federal rule; harvest and possession are prohibited in federal waters.
 - Proposal: Division proposal to add prohibition to rule.
 - Public comments: No comments received.
 - RIMFC: 7 – 0 in support as proposed.
 - Marine Fisheries: The Division supports the prohibition as proposed in the notice.
 - Timing to file: Immediately.
9. **Proposed prohibition of Atlantic wolffish in state waters (Part 3, proposed new section 3.33):**
- Background: Proposal syncs state and federal rule; harvest and possession are prohibited in federal waters.
 - Proposal: Division proposal to add prohibition to rule.
 - Public comments: No comments received.
 - RIMFC: 7 – 0 in support as proposed.
 - Marine Fisheries: The Division supports the prohibition as proposed in the notice.
 - Timing to file: Immediately.
10. **Continuation of “Part 12 - Research Pilot Aggregate Program” regulations:**
- Background: Program was initially implemented in early 2019, with the Division now analyzing data.
 - Proposal: Program expires end of 2019 per rule. When originally adopted, the Division proposed to provide the Council with an analysis of any changes to catch rates and/or operational behavior. This analysis was provided at the workshop conducted on October 16 and last night’s Council meeting. Proposal is to continue with an expanded program for an additional two years through 2021.
 - Public comments: Broad mis-conception regarding the intention and administration of the program led to general lack of support for the program.
 - RIMFC: Two separate motions were made and votes taken. The first motion passed 7 – 0 in general support of continuing the program through 2021. A second motion passed 4 – 3 to increase the number of participating vessels in the program from 3 to 6 per gear category, to amend the application period from no later than November 30, 2018 to between January 1 and March 30 annually, and to reduce the eligibility requirement for historical record of landing summer flounder from 5 years (2014) to 1 year. Additionally, the RIMFC recommended an economic

analysis be performed on the program in parallel with the fishery performance analyses.

- Marine Fisheries: The Division supports continuing the program and making the modifications as proposed in the notice. The Division feels that it is imperative to expand the program to additional participants and continue for an additional two years to obtain sufficient data to fully analyze the how participation in the program effects catch rates and fishing behavior. Additionally, the Division will seek out potential funding opportunities for the economic analysis proposed by the Council.
- Timing to file: Immediately.

11. **Proposed new adoption “Part 13 - Cooperative Multi-State Possession and Landing Pilot Program for Summer Flounder”:**

- **Background:** New program initially proposed by the state of Connecticut designed to increase operational efficiencies in the commercial fishing industry.
- **Proposal:** Proposed new rule (i.e., adoption) which would authorize commercial fishers to simultaneously carry possession limits for, and land, summer flounder in cooperating states during the same fishing trip. RI rules must sync with rules of other states to work effectively.
- **Public comments:** Concern expressed that the program may result in increased effort and early closures. Concern expressed that the eligibility provision requiring applicants not to have been assessed a criminal or administrative penalty within the past three years is overly restrictive.
- **RIMFC:** 7 - 0 in support as proposed.
- **Marine Fisheries:** The Division supports the program as proposed in the notice.
- **Timing to file:** Immediately.

12. **Proposed adoption of a whelk pot tagging program (Part 4, proposed new section 4.18):**

- **Background:** A whelk pot tagging program was originally considered in 2012 when the commercial limit of 300 pots was adopted. At that time the Council recommended that a tagging program be considered to address pot limit compliance. This matter was initially brought to hearing in March 2019, however was not adopted at that time due to concerns expressed regarding several aspects of the program; namely that of routine gear loss tags, gear rotation tags, and valid dates of tags.
- **Proposal:** Adopt a whelk pot tagging program in rule.
- **RIMFC:** 7 – 0 in support of adopting the program, with amendments to increase the routine loss tags to 15% and valid dates from April 1 – March 31 consistent with the recommendations of the Shellfish Advisory Panel.
- **Marine Fisheries:** Support as proposed with the Council recommended modifications.
- **Timing to file:** Rule must be submitted to ORR for post-hearing review. File immediately upon clearance from ORR.