



RHODE ISLAND  
DEPARTMENT OF ENVIRONMENTAL  
MANAGEMENT

235 Promenade Street, Providence, RI 02908-5767

TDD 401-222-4462

To: Mark Gibson  
Deputy Chief – Marine Fisheries, DFW

From: W. Michael Sullivan  
Director

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

Date: November 17, 2006

Re: Decision on September 11, 2006  
Marine Fisheries Public Hearing Items

This is in response to your November 9, 2006 memorandum regarding the five marine fisheries regulatory proposals that were presented at the September 11, 2006 public hearing.

I have reviewed all of the documents forwarded with your memo – the minutes of the July 19, 2006 meeting of the Council's Floating Fish Trap Advisory Panel; the public hearing summary document; the summary of public hearing comments, including the written comments submitted at or prior to the hearing; and the minutes of the September 11, 2006 and October 18, 2006 meetings of the Council.

Based on my review of the record, and in response to the recommendations offered by you and the Council, I have reached the following decisions:

Proposed Changes to Floating Fish Trap Regulations: I hereby adopt your recommendation, and that of the Council, to enact the proposed regulatory changes pertaining to floating fish traps. I note that these changes clarify and amend the existing regulations with regard to trap locations -- including the deletion of non-renewed traps as provided for under the current regulations – and with regard to marking requirements. I further agree that the penalty section of the regulations, which appears to have been inadvertently omitted from the proposed amendment, should be reinserted. And I fully

support the inclusion of a fish-trap safety component into the boating safety courses administered by our Law Enforcement Division. I know that you have already contacted Chief Hall on this issue; by copy of this memo, I will reiterate to him the importance of moving forward with that initiative.

Proposed Adoption of Safe Harbor Regulations: I hereby adopt your recommendation, and that of the Council, and, by copy of this memo, I ask our Legal Office to render the policy into regulation. Once that process is complete, I ask that it be prepared for filing with the Secretary of State.

I appreciate the Council's support for this policy, and its incorporation into regulation. I had initially pushed to get this measure in place, not because it wasn't being practiced, but because I wanted it codified and formalized, given its importance to the protection of those who routinely face the perils of the sea.

Proposed Adoption of State Monkfish Regulations: I hereby adopt your recommendation, and that of the Council, to enact monkfish regulations for state waters that complement the federal fishery management plan for monkfish. Specifically, I agree to enact a 50-pound tail limit (166-pound whole fish limit) for both commercial and recreational fishermen who do not have a federal monkfish permit. Further, I agree to establish a closure of the monkfish fishery in state waters whenever a federal closure takes place in federal waters.

In reaching my decision, I am cognizant of the potential impact these state regulations may have on legitimate state-waters fishermen who have been, and wish to continue, landing monkfish at levels exceeding the 50-pound daily limit. It remains unclear whether such legitimate fishing activity has been taking place and, if so to what extent, but I am aware of the claims. As such, I am open to the idea of exploring the further development of a state monkfish management program that accommodates the interests of those fishermen who have established a legitimate history of monkfish landings in state waters. However, any such program would need to complement the federal program, which involves several different permit categories that allow many different possession limits depending on the qualifications of each participating vessel. The federal program also includes a days-at-sea component.

Until such time as a broadened, complementary state program can be more fully evaluated, I support the imposition of a regulatory standard that prevents excess fishing mortality on a stock that is currently overfished, in the process of being rebuilt, and still well below its biomass target, which must be met by 2009 per federal law. The federal monkfish program is of major importance to (federally permitted) RI fishermen, who since May 2005 have landed over 3.5 million pounds of monkfish, valued at over \$5.7 million. While the federal management program only pertains to monkfish in federal waters, it is incumbent upon states to help ensure that monkfish, and all fishery resources, are managed consistently throughout their range. The current state waters-loophole, which allows for the unregulated harvest of monkfish in state waters, is thus unacceptable from the standpoint of sound fisheries management. Under the current federal management program, any fisherman can obtain a federal incidental catch permit, enabling them to harvest and sell up to 50 pounds of monkfish tails or 166 pounds of

whole monkfish. I support the extension of this same regulatory standard into state waters.

I note that the new state standard is actually higher than the average landings over the past 18 months in Rhode Island by non-federally permitted vessels. As reported, non-federally permitted vessels have landed 156,315 pounds of monkfish, or an average of 37 pounds (tail weight) per vessel per trip, presumably from state waters, during this 18-month period. Thus, for the average state waters fishermen, the new regulation will have the effect of maintaining the status quo and preventing major increases in effort.

I further note that this action by Rhode Island brings our state program in line with Maine, Connecticut, and Virginia; and I anticipate that our action will help to influence other states, including Massachusetts, who are considering the adoption of complementary state waters regulations for monkfish.

While I am convinced of the need to move forward at this time with a 50-pound possession limit, I urge you and your colleagues from the other states, in coordination with the New England Council, to evaluate its impacts and determine whether there might be any viable, alternative management options that would address the interests of any unduly impacted fishermen in a manner consistent with the goals and principles of the federal plan.

Proposed Adoption of State Cod Regulations: I hereby adopt your recommendation, and that of the Council, to enact cod regulations for state waters that complement the federal fishery management plan for cod. Specifically, I agree to enact a 22-inch minimum size, a 75-pound commercial daily possession limit, and a 10-fish per person recreational daily possession limit.

My justification for enacting these regulations, consistent with your memo, follows the same basic rationale underlying my decision with regard to the monkfish regulations. Currently, RI has no commercial or recreational possession limits for cod in state waters; we also have inconsistent minimum size restrictions (19 inches commercial, 20 inches recreational), both of which fall short of the 22-inch federal standard. While there are very few legal-sized cod in RI waters and, as a result, no significant commercial or recreational fishing activity within 3 miles, the potential for such activity exists, particularly if the (primarily federal-waters) stock responds to federal management measures and recovers. As such, it makes sense to enact state regulations that complement the federal management program, thereby helping to ensure that the resource is managed as a unit throughout its range.

I note that these minimum size and daily possession limits reflect only the most basic components of the otherwise complex federal management program governing groundfish. Nonetheless, they effectively close the current state-waters loophole, which allows for the unregulated harvesting of cod (over 20 inches) in state waters.

I further note that both Massachusetts and Connecticut have consistent minimum sizes (22 inches) for both commercially and recreationally caught cod. Massachusetts has a 75-pound daily possession limit for all non-federally permitted vessels, and Connecticut cross-references the federal program for its state-waters possession limits, thus ensuring state-federal consistency. And both states have a 10-fish limit for the recreational sector. Thus, the action we're now taking brings our state cod management program in line with both of our neighboring states.

Proposed Adoption of State Sea Scallop Regulations: I hereby adopt your recommendation, and that of the Council, to enact sea scallop regulations for state waters that complement the federal fishery management plan for sea scallops. Specifically, I agree to enact a 3.5-inch minimum size, a 40-pound (shucked) or 5-bushel (in-shell) daily possession limit, and a 10.5-foot maximum dredge size. All of these restrictions will apply to both commercial and recreational fishermen.

My justification for enacting these regulations, consistent with your memo, follows the same basic rationale underlying my decision with regard to the monkfish and cod regulations. Currently, RI has no commercial or recreational restrictions governing sea scallops in state waters. While there are no known sea scallops in RI waters and, as a result, no commercial or recreational fishing activity within 3 miles, the potential exists. As such, it makes sense to enact state regulations that complement the federal management program, thereby helping to ensure that the resource is managed as a unit throughout its range.

I note that these minimum size and daily possession limits reflect only the most basic components of the otherwise complex federal management program governing sea scallops. Nonetheless, they effectively close the current state-waters loophole, which allows for the unregulated harvesting of sea scallops in state waters.

cc: Chief Steven Hall, DEM Division of Law Enforcement  
Patty Fairweather, Executive Counsel  
Gary Powers, Deputy Legal Council