



## RHODE ISLAND DEPARTMENT OF ENVIRONMENTAL MANAGEMENT

235 Promenade Street, Providence, RI 02908-5767 TDD  
401-222-4462

To: Mark Gibson  
Division of Fish & Wildlife – Marine Fisheries

From: W. Michael Sullivan  
Director

Date: April 24, 2007

Re: Marine Fisheries Regulatory Issues

I am writing with regard to a series of regulatory issues – namely those that were presented at the November 20, 2006 and January 25, 2007 public hearings. These issues include:

- Summer flounder commercial regulations for 2007
- Summer flounder exemption certificate transfer proposal
- Scup commercial regulations for 2007
- Black sea bass commercial regulations for 2007
- Lobster v-notch definition
- Lobster effort control plan
- Spiny dogfish commercial regulations for 2007
- Horseshoe crab commercial licensing

I have reviewed all of the relevant information pertaining to these issues – namely, the minutes from all of the relevant advisory panel meetings, the public hearing summary documents and summary of public hearing comments, including written comments, from the 11/20/06 and 1/25/07 public hearings, the minutes of the 12/4/06 and 2/5/07 meetings of the RI Marine Fisheries Council, and your 12/26/06, 2/20/07, and 3/28/07 memos to me.

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

Summer flounder commercial regulations – I note that this proposal was a difficult one for all involved. The fear of dramatic reductions in harvest capacity has been somewhat modified by recent Federal actions; however we need to make changes to ensure that Rhode Island's limited quota is properly managed in the best interests of

all participants in the fishery. I commend the industry, the advisory panel, and the Council for giving the matter such careful and thoughtful consideration.

The fishery should be kept open as much as possible during the beginning and middle of the summer. This can be done without unfair disadvantage to any one particular sector. Thus I direct the merger of Summer I and Summer II seasons, as recommended, and set the limit consistent with current 100 pounds/day.

I also concur with the recommended **Friday/Saturday closure**. I direct it to commence on 1 June to allow for sufficient notice. It will establish a 5-day/week fishery rather than a 7-day/week fishery, and should thereby help to extend the season. It is a conservation-oriented approach in that it provides a 48-hour period each week during which the stock is not subject to any commercial fishing pressure. It will put us in synchrony with Massachusetts, which has a closed commercial fishery for fluke on Fridays and Saturdays from June 10 – Oct 31. Additional monitoring and enforcement will have to be implemented. Current gill net regulations dictating their tending at 24 hour or small intervals will need to be enforced throughout the season, and particularly during the Friday/Saturday closures.

The recommended **summer aggregate program** needs to be tested with a trial run during 2007. I direct it to commence on 1 June so that notices, applications and processes can begin immediately. The summer aggregate limit should be set at 350 pounds/day. The program should enable participants to operate more efficiently, using less fuel and generating less by-catch, since they will be fishing in more concentrated time frames, rather than every day. When not fishing on fluke, they can either remain at dock, or target other species, allowing for more diversification. The program also offers to help stretch out the quota, since those participating will only be able to harvest about 75% of what they could harvest if they fished every day.

Per your recommendations, which appear to be consistent with the Council's advice, I direct that the summer aggregate program include the following provisions: available only to those not participating in the winter aggregate program for fluke; available only to those with fluke exemption permits; and to be terminated when 80 percent of the combined summer allocation is harvested. It should also be made clear that the Friday/Saturday closures apply to all commercial fishermen, including those participating in the aggregate program.

The **winter II possession limit** shall be 225 pounds/day effective November 1, as recommended.

Summer flounder exemption certificate transfer proposal – I note that this proposal is a technical clarification, aimed at bringing the upgrade and transfer provisions of the state's summer flounder exemption certificate program in line with the federal program for permit transfers. I further note that the proposal was unanimously supported by the summer flounder advisory panel and the full Council, with no public comment, and that you too urge adoption. I concur, and ask that you prepare the matter for formal adoption.

Scup commercial regulations – I note that there are two commercial-scup-related issues to be decided upon, one emanating from the Nov. 20 hearing and the other from the Jan. 25 hearing. I will address them together.

First, with regard to the **quota management** issue (considered at the 11/20 hearing), I note that there were two proposals offered for consideration, in addition to maintaining the status quo. The first proposal is to increase the set aside for June from 10% to 12%. The second proposal is to shift the allocation of the overall quota from 60% floating fish trap/40% general category to 40% floating fish trap/60% general category. I note that the scup/black sea bass advisory panel recommended remaining at status quo, three of the four individuals who testified at the public hearing recommended remaining at status quo or increasing the June set aside to 12%, the Council urged adoption of the June set-aside increase, and you share that recommendation. I concur, and ask that you prepare the matter for formal adoption.

I appreciate your thoughts, which follow on those offered by the Commercial Rod and Reel Association, regarding the historical allocation underlying the 60/40 split between the trap companies and the rest of the commercial industry. However, I see no basis for changing the dedicated quota share for the trap sector at this time, particularly since the commercial scup quota has not been reached over the past few years. I do encourage further discussion and analysis of the issue, as it is important to ensure that quota shares are appropriately allocated among sectors, and not necessarily fixed in accordance with historical factors that may have changed over time.

Second, with regard to the **starting possession limit in the winter 2 sub-period** issue (considered at the 1/25 hearing), I note that the proposal is to mirror the federal limit, once that is set by NMFS. I further note that the proposal was unanimously supported by the scup/black sea bass advisory panel and the full Council, with no public comment, and that you too urge adoption. I concur, and ask that you prepare the matter for formal adoption.

Black sea bass commercial regulations -- I note that there are two commercial-black sea bass-related issues to be decided upon, one emanating from the Nov. 20 hearing and the other from the Jan. 25 hearing. I will address them together.

First, with regard to the **quota management** issue (considered at the 11/20 hearing), I note that there were no suggestions offered by anyone to modify the program. As such, I support maintaining the status quo for 2007.

Second, with regard to the **escape vent size** issue (considered at the 1/25 hearing), I note that the proposal is to comply with an ASMFC requirement by increasing the number of escape vents in black sea bass pots to two, with both being in the parlor portion of the trap, and requiring that the vents be 2.5" in diameter if circular in shape. I further note that the proposal was unanimously supported by the scup/black sea bass advisory panel and the full Council, with no substantive public comment, and that you too urge adoption. I concur, and ask that you prepare the matter for formal adoption.

Lobster v-notch definition – Given the pressing need to have a permanent measure in place by April 10, which is when the emergency measure expired, I previously decided (on March 22) to enact a permanent 1/8" v-notch definition. So there is no need to take any further regulatory action with regard to this matter. As indicated in the Department's 3/22/07 press release, I felt that it was important not to put RI fishermen at a competitive disadvantage with MA fishermen by adopting a different, and more stringent, v-notch standard. Moreover, despite the very impressive push by

proponents of the zero-tolerance standard to do what is best for the resource, I ultimately decided that we can do more by 1) continuing to v-notch lobsters throughout their range, and 2) adopting a uniform v-notch standard throughout their range. I applaud and strongly support the ongoing work being done by the ASMFC – and, at my request, by Dr. Stan Cobb, Dr. Jeremy Collie, and you – on these issues, and I look forward to moving forward with appropriate recommendations as they emerge. I have received an initial report, and will be responding by the end of this month.

Lobster effort control plan – Given the pressing need to have a clarified and improved set of regulations in place prior to making any final decisions on appeals, I previously decided (on April 9) to enact the revised regulations governing the lobster effort control plan. So there is no need to take any further regulatory action with regard to this action (recognizing, however, that the allocation transfer component of the program, which was the subject of a public hearing earlier this month, remains pending).

The decision I reached on April 9<sup>th</sup> was to promulgate the new, improved regulations, which essentially just improve the clarity of the original set, with two important changes. The first change I agreed to was to strike the word “sustained” from sub-section 15.14.2-9(b) relating to the “reported traps fished” values. While this was added to the proposal, at my request, to help address a valid concern (involving outlier traps and their effect on allocations), I recognize that there was strong opposition – by the public and the Council -- to the proposed adoption of a sustained-traps standard, and so I opted not to pursue it. The second change I agreed to was to replace “and” with “and/or” at the end of sub-section 15.14.2-8(b)(i). As urged by several individuals who commented at the public hearing, this change will allow for additional flexibility with regard to the documentation required to establish material incapacitation on the basis of a medical condition. I believe this flexibility comports with the intent of the material incapacitation provision set forth by Addendum VII to Amendment 3 to the Interstate Fishery Management Plan for American Lobster. Moreover, based on advice from legal counsel, I am concerned that if we are not appropriately flexible in our review of medical hardship cases, we run the risk of violating federal standards set forth under the Americans with Disabilities Act (ADA).

For the same reason as that given above, I decided not to follow the Council’s recommendation to not allow consideration, under appeal, of an applicant whose fishing performance was *adversely affected* due to a material incapacitation. I believe that the more stringent standard – i.e., *prevented from fishing* – is too restrictive and not in keeping with the intent of Addendum VII. And, on the advice of legal counsel, I believe that the more stringent standard would expose the State to a possible legal challenge of our entire process pursuant to an ADA complaint. I recognize that this issue could subject the State to a possible non-compliance finding by the ASMFC, but I am confident that we can meet that challenge, if it presents itself, by demonstrating of being accommodating with regard to legitimate claims of medical hardship that directly impacted an individual’s fishing performance during the qualifying period. Moreover, I am committed to ensuring that the provision is applied judiciously, so that it would only potentially affect a relatively small number of (deserving) appellants.

Spiny dogfish regulations – I note that the this proposal is to increase the daily possession limits for spiny dogfish from 600 pounds to 2,000 pounds during the period May 1 – October 31, and from 300 pounds to 2,000 pounds during the period November 1 – April 30. I further note that the intent of the proposal is to follow through on the

State's new authority under ASMFC to develop our own management plan for this species, and to do so in concert with Massachusetts. Finally, I note that the proposal was unanimously supported by the full Council, with no public comment, and that you too urge adoption. I concur, and ask that you prepare the matter for formal adoption.

If you believe that there might be sufficient interest within the industry to move forward with an aggregate landing program proposal for spiny dogfish, I would urge you to do so.

Horseshoe crab licensing – I note that this proposal is simply designed to update the regulations pertaining to the commercial horseshoe crab fishery to allow them to be harvested by anyone with a valid license (namely, a multi-purpose license, or a principal effort or commercial fishing license with a non-lobster crustacean endorsement). The proposal also deletes obsolete regulatory language pertaining to 2001 quota levels. I recognize that this is essentially a housekeeping measure, fully supported by the Council, the public, and you. I concur, and ask that you prepare the matter for formal adoption.