



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: April 8, 2016

Re: Final Decisions Pertaining to February 16, 2016 Marine Fisheries Public Hearing Items

I have received and reviewed your memo to me, dated March 28, 2016 and attached herewith, regarding the nineteen public hearing items from the February 16, 2016 public hearing. With that memo, I have also received and reviewed all relevant supporting documentation, including the February 16, 2016 public hearing document and public hearing comments, and the summary report from the March 7, 2016 meeting of the RI Marine Fisheries Council.

I hereby approve all of the recommendations, applicable for 2016, as set forth in your memo. With a few minor exceptions, noted herein, all of your recommendations are consistent with the recommendations of the RI Marine Fisheries Council, rendered at their March 7, 2016 meeting. The specific regulatory items, and the final decisions for each are as follows:

1. Recreational Summer Flounder
 - Decision: Status quo
2. Recreational Tautog
 - Decision: Status quo
3. Commercial Tautog
 - Decision: Status quo
4. Recreational Scup
 - Decision: Status quo
5. Recreational Black Sea Bass
 - Decision: deferred, pending outcome of April 20 public hearing and RIMFC meeting, at which new options will be considered.

6. Coastal Sharks

- Decision: Adoption of new regulations, as proposed, which 1) establish mechanism to manage state quota for smoothhound sharks; and 2) establish framework for the 2016 Commercial Aggregated Large Coastal Sharks and Hammerhead Sharks Species Groups to maintain consistency with ASMFC possession limits for Aggregated Large Coastal Sharks and Hammerhead Sharks Species Groups, with an possession limit of 45 sharks/vessel/day.

7. Recreational Skate

- Decision: Adoption of new regulation, as revised per public hearing process and as recommended by the RIMFC, of 10 fish/person/day.

8. Commercial Skate – Wing Fishery

- Decision: Adoption of new regulations as follows:
 - Clarify definition of commercial skate wing fishery, as proposed;
 - Establish new possession limits, as revised per public hearing process and as recommended by the RIMFC, as follows:
 - Weekly (aggregate) possession limit of 18,200 pounds/vessel/week for wings only; or 41,314 pounds/vessel/week for whole skates.
 - No sub-periods (year-round fishery)
 - No trigger to decrease possession limits
 - No new restrictions on federally permitted vessels, balanced by affirmation that federally permitted vessels are bound by federal regulations.
 - Comment: I note that all of the provisions set forth above are consistent with the Council's recommendation except for the last bullet. I understand that the Council voted to support the industry group's proposal to prevent federally permitted vessels from dropping their federal permits and harvesting in state waters per the newly established possession limits. However, I concur with your recommendation not to impose such a restriction at this time, but instead carefully track the activities of federally permitted vessels to determine whether there is any shift of effort into state waters via permit dropping. If such a shift occurs, the matter should be subject to reconsideration.

9. Commercial Skate – Bait Fishery

- Decision: Adoption of new regulations, as proposed, which 1) clarify definition of skate bait fishery; 2) establish new 23-inch maximum size; and 3) establish new sub-periods and possession limits as follows:
 - Sub-period I - May 1 through July 31:
 - Sub-period II - August 1 through October 31:
 - Sub-period III - November 1 through April 30:
 - Possession Limit: For each sub-period, the starting possession limit is 25,000 pounds/vessel/day (whole skate). When 90 percent of a bait skate TAL allocation in either Sub-period I or II, or when 90 percent of the annual Skate Bait TAL is landed, as determined by NOAA Fisheries, the possession limit will be reduced to the whole

weight equivalent of the skate wing possession limit in effect at that time (either 5,902 pounds, 9,307 pounds, or 1,135 pounds whole skate).

10. Finfish Regulations -- General Editing

- Decision: Adoption of new regulations (all involving clarification and streamlining, no substantive changes) as proposed.

11. Recreational Striped Bass

- Decision: Status quo

12. Commercial Striped Bass – General Category

- Decision: Adoption of new regulation, as revised per public hearing process and as recommended by the RIMFC, establishing an earlier -- May 29 -- start date for the first sub-period. All other provisions remain status quo.

13. Commercial Striped Bass – Floating Fish Traps

- Decision: Status quo

14. Commercial Striped Bass – Tags and Reporting

- Decision: Adoption of new regulations, as proposed, which:
 - Require all bass to be tagged with a current year S/B tag by a designated tagging agent at the point of sale;
 - Provide that tags shall be made available by DEM Marine Fisheries;
 - Require tagging agents to return all tag reports and unused tags to DEM Marine Fisheries annually, by January 1 of the following year; and
 - Provide that tagging agents who fail to comply with tagging and reporting requirements may be deemed ineligible to obtain tags in future years.

15. Recreational Striped Bass – Fin-Clipping Provision

- Decision: Adoption of new regulation, requiring any person recreationally harvesting a striped bass thirty-four (34) inches or larger to remove the right pectoral fin at a point as close to the body of the fish as possible, at the time of harvest.
 - Comment: I appreciate the Council’s recommendation to add the phrase “and not releasing” after “recreationally harvesting” and to add the word “entire” before “right pectoral fin.” However, I concur with your recommendation, based on consultation with DEM Legal and DEM Law Enforcement, that the Council’s suggested additions are not necessary since 1) the term *harvesting* is already well-established as a term that is commonly recognized within the *Rhode Island Marine Fisheries Regulations* as meaning the decision not to return (release) a fish to the water but rather to take or possess it, and 2) the new requirement to remove the right pectoral fin “as close to the body as possible” clearly implies the need to remove the entire fin. I further note that the fin-clipping regulation already in effect in Massachusetts utilizes similar (non-

perfected) language. As such, the new regulation should be enacted without the perfections recommended by the Council.

16. Dealer Regulations – Complementary Fin-Clipping Provision

- Decision: Adoption of new regulation, as complement to new fin-clipping language set forth above under #15, prohibiting licensed dealers from purchasing and/or offering for sale any striped bass that has the entire right pectoral fin removed.

17. Dealer Regulations – General Editing

- Decision: Adoption of new regulations (all involving clarification and streamlining, no substantive changes) as proposed.

18. New Stand-Alone Regulatory Section (“Part I”) encompassing “Definitions” and replacing “Legislative Findings”

- Decision: Adoption of new regulations (all involving clarification and streamlining, no substantive changes) as proposed.

19. Repeal of Part 17 – Maps

- Decision: Enactment of repeal, after the Marine Fisheries website is updated to include all relevant maps.



RHODE ISLAND
DEPARTMENT OF ENVIRONMENTAL MANAGEMENT
DIVISION OF FISH & WILDLIFE / MARINE FISHERIES
 Three Fort Wetherill Road
 Jamestown, Rhode Island 02835

INTER-OFFICE MEMO

TO: Janet Coit, Director

FROM: Jason McNamee, Chief

DATE: March 28, 2016

SUBJECT: Request for decision regarding proposed amendments to the RI Marine Fisheries regulations that were the subject of a public hearing conducted on February 16th and deliberated by the RI Marine Fisheries Council at their March 7th meeting.

1. **Recreational Summer Flounder:**

- Options presented at hearing:
 - **Option 1:** Status quo (SQ).
 - **Option 2:** Reduce bag limit from 8 to 5 fish/person/day
- **Public comment:** Few comments, all in support of SQ; support of SQ by RIPCBA and RISAA. No additional support for option 2.
- **Council:** Motion to recommend adoption of SQ; passed 7 - 0.
- **Marine Fisheries:** Marine Fisheries supports SQ.
- **Timing to file:** N/A (SQ).

2. **Recreational Tautog:**

- Options presented at hearing:

Option	Min. Size	Rec. and P/C Season/Poss. Limit
Option 1: Status quo	16"	April 15 – May 31: 3 fish June 1 – July 31: Closed Aug. 1 – 3rd Sat. in Oct: 3 fish 3rd Sat. in Oct. – Dec. 15: 6 fish
<u>Option 2: Decrease Poss. Limit due to poor stock status</u>		April 15 – May 31: 3 fish June 1 – July 31: Closed Aug. 1 – 3rd Sat. in Oct. Dec. 31: 3 fish 3rd Sat. in Oct. – Dec. 31: 6 fish
<u>Option 3: Additional proposal submitted</u>		April 15 – May 31: 3 fish June 1 – July 31: Closed Aug. 1 – 3rd Sat. in Oct: 6 3 fish

- **Public comment:** Majority of comments in support of SQ; support of SQ by RIPCBA and RISAA. No additional support for options 2 or 3.

- **Council:** Motion to recommend adoption of option 1 (SQ); passed 7 - 0.
- **Marine Fisheries:** Marine Fisheries offered the decreased recreational bag limit option so that a change could be entertained if needed or wanted. It is clear that stock status is poor for tautog in SNE, and more conservative management is coming for this species. Despite this, Marine Fisheries supports SQ at this time. Marine Fisheries feels that the current poor stock status will not be exacerbated by allowing another year's fishing to unfold. Getting out in front of the ASMFC with RI specific management in this year could create additional problems for our management program in subsequent years. Marine Fisheries will monitor the fishery and will propose potential changes to management for 2017 pending the outcome of the ASMFC's process for tautog.
- **Timing to file:** N/A (SQ).

3. **Commercial Tautog:**

- Options presented at hearing:

Option	Min. Size	Season	Quota	Possession Limit
Option 1: Status quo	16"	April 15 – May 31	1/3 of total	10 fish/vsl/day
		Aug. 1 – Sept. 15	1/3 of total	10 fish/vsl/day
		Oct. 15 – Dec. 31	1/3 of total	10 fish/vsl/day
<u>Option 2: RIFA proposal</u>	16"	<u>The commercial regulations regarding the harvest of Tautog shall be the same as that of the recreational fishery.</u>		
<u>Option 3: Additional Industry proposal</u>		April 15 – May 31	1/3 25%	10 fish/vsl/day
		Aug. 1 – Sept. 15	1/3 25%	10 fish/vsl/day
		Oct. 15 – Dec. 31	1/3 50%	10 fish/vsl/day

- **Public comment:** Substantial comments received in support of both SQ and Option 3; comm. rod and reel strong support for option 3; no additional support for option 2.
- **Council:** Motion to recommend adoption of SQ; passed 7 - 0.
- **Marine Fisheries:** For the same reasons as noted above for the recreational fishery, Marine Fisheries supports SQ for 2016. Further, given the impending conservative management measures that will most likely be needed in 2017, it would not be wise to change our commercial management from a hard TAL to a soft quota approach at this time as proposed by Option 2, though the reasoning behind the proposal has merit and should be considered in the future. Finally, as reasoned by the RIMFC, the change in allocation proposed in option 3 impacts specific user groups negatively while benefiting other user groups, so Marine Fisheries would not support this without additional discourse on this subject. The allocations proposed would also make quota management much more challenging for Marine Fisheries, creating a risk of incurring large overages or premature closures.
- **Timing to file:** N/A (SQ).

4. **Recreational Scup:**

- **Option 1:** Status Quo
- **Public comment:** Support of SQ by RIPCBA.
- **Council:** Motion to recommend adoption of SQ; passed 7 - 0.
- **Marine Fisheries:** Marine Fisheries supports SQ, and notes that this is one fishery where we have developed a program that has allowed for stability in management over a number of years by forgoing some yield, which is an attribute and something we should work toward in the future.
- **Timing to file:** N/A (SQ).

5. **Recreational Black Sea Bass:** Due to recent developments that were not adequately addressed during the February public hearing process, a new hearing is set for 4/20/2016 on recreational black sea bass. Marine

Fisheries did not get a minimum size increase approved by the ASMFC technical committee (TC) for 2016 management, but neighboring states are proposing or have implemented regulations instituting an increased minimum size, thus creating a situation where RI felt compelled to offer the same. These new measures have been approved by the TC, are assumed to be accepted by the ASMFC management board as well, and are currently out to public notice in RI. We will process the results of the public hearing and subsequent RIMFC meeting for your consideration as expediently as possible.

6. **Coastal Sharks:**

- **2 proposals:**
 - Establish mechanism to receive and manage state quota for Smoothhound Sharks;
 - Establish framework for the 2016 Commercial Aggregated Large Coastal Sharks and Hammerhead Sharks Species Groups Fishery to maintain consistency with ASMFC possession limit for Aggregated Large Coastal Sharks and Hammerhead Sharks species groups.
- **Public comment:** None.
- **Council:** Motion made to recommend adoption of the language as proposed; passed 7 – 0.
- **Marine Fisheries:** Marine Fisheries supports the proposed changes.
- **Timing to file:** Immediately.

7. **Rec. Skate:**

- **Option proposed:** **One hundred (100) lbs/vessel/day.**
- **DLE comment:** Change units from lbs to # of fish; DFW calculates this to 80 fish/vessel/day.
- **Public comment:**
 - F. Blount: 300 lbs/vessel/day or 10 fish/person/day;
 - RIPCBA: 10 fish/person/day for charter/party permit holders
- **Council:** Motion to recommend adoption of 10 fish/person/day; passed 5 – 1 (*J. Grant* opposed; *B. Macintosh* recused).
- **Marine Fisheries:** Marine Fisheries supports adopting 10 fish/person/day.
- **Timing to file:** Immediately.

8. **Skate Wing Fishery:**

- **Clarify definition of the commercial Skate Wing fishery:**
 - **Public comment:** None.
 - **Council:** Motion to recommend adoption of language as proposed; passed 6 – 0 (*B. Macintosh* recused).
 - **Marine Fisheries:** Marine Fisheries supports the changes as proposed.
 - **Timing to file:** Immediately.
- **Establish commercial sub-periods and possession limits:**
 - **Noticed language (federal plan):**

Sub-period	Poss. limit (lbs/vsl/day)
<u>5/1 – 8/31</u>	<u>2,600*</u>
<u>9/1 – 4/30</u>	<u>4,100*</u>

* Decreasing to 500 lbs once 85% of TAL reached

- **Industry proposal:** Establish weekly (aggregate) possession limit of 18,200 (2,600 X 7) lbs/vsl for state vessels that do not possess any active federal permits between 5/1 thru 8/31.

Sub-period	Poss. limit (lbs/vsl/wk)
<u>5/1 – 4/30</u>	<u>18,200</u>

- **Public comment:** Industry proposal submitted as shown. Written comment supporting a program more in line with the federal plan as originally proposed.
- **Council:** Motion made to recommend adoption of the industry option as proposed; passed 6 – 0 (*B. Macintosh* recused).
- **Marine Fisheries:** Marine Fisheries supports the industry proposal with modification. Per advice from the Council, Marine Fisheries will monitor the fishery closely for increased effort and any landings that are anomalously high. This will also entail review to make sure the weekly trip limits are not being exceeded. Marine Fisheries does not support the portion of the industry proposal regarding restriction of federal permits at this time but will review permit activity to analyze whether there is in fact an influx of effort from federal fishers in to state waters through manipulation of their permit activity.

Final annotated language as follows:

(B) **State-waters Skate Wing fishery:** Shall be defined as skate harvested, possessed, or landed **by a vessel:**

(1) Fishing in state waters, not on a previously declared Day At Sea (DAS), and without an active federal open-access skate permit; and

(2) For food for human consumption, i.e., ~~product landed~~ with a designated ACCSP Disposition Code 001 = Food.

(3) Minimum size: No minimum size.

(4) Possession limit: ~~There is no commercial possession limit for the skate wing fishery, provided the vessel is fishing in state waters, not on a previously declared Day At Sea (DAS), and without an active federal open-access skate permit.~~ 18,200 pounds per vessel per week for wings only; or 41,314 pounds per vessel per week for whole skate.

- **Timing to file:** Immediately upon finalization of language as approved by DEM legal and DLE.

9. **Skate Bait Fishery:**

- **Clarify definition of the commercial Skate Bait fishery:**
 - **Public comments:** None.
 - **Council:** Motion to recommend adoption of language as proposed; passed 6 – 0 (*B. Macintosh* recused).
 - **Marine Fisheries:** Marine Fisheries supports the language as proposed.
 - **Timing to file:** Immediately.
- **Establish maximum length of 23 inches and commercial sub-periods and possession limits:**
 - **Public comments:** None.

- **Council:** Motion to recommend adoption of the maximum length and language as proposed; passed 6 – 0 (*B. Macintosh* recused).
- **Marine Fisheries:** Marine Fisheries supports the definition as proposed as it is a conservation measure to protect winter skates.
- **Timing to file:** Immediately.

10. **General editing of Finfish regulations:**

- **Public comments:** None.
- **Council:** Motion to recommend adoption of language as proposed; passed 7 – 0.
- **Marine Fisheries:** Marine Fisheries supports as proposed and notes that the restructuring of the regulations is nearing completion.
- **Timing to file:** Immediately.

11. **Recreational Striped bass:**

- **Option 1:** Status Quo

Option	Min. Size	Possession Limit	Season
Option 1: Status quo	28”	1 fish/day	Open year round

- **Public comment:** Few comments were made at hearing; support of increase to 2 fish bag limit for P/C by RIPCBA.
- **Council:** Motion to recommend adoption of SQ; passed 7 - 0.
- **Marine Fisheries:** Marine Fisheries supports SQ and notes that there may be need to change regulations in the near future due to signals from the stock assessment on improved stock status.
- **Timing to file:** N/A (SQ).

12. **Commercial Striped Bass General Category:**

- **Options proposed:**

Option	Min. Size	Possession Limit	Quota	Season
Option 1: Status quo	34”	5 fish/person/day (max 5 fish/vessel)	70%	6/8 – 8/31
			30%	9/8 – 12/31
Industry Option 1	34”	5 fish/person/day (max 5 fish/vessel)	70%	6/8 5/15 – 8/31
			30%	9/8 – 12/31
Industry Option 2	34”	5 fish/person/day (max 5 fish/vessel)	70 80 %	6/8 5/15 – 8/31
			30 20 %	9/8 – 12/31

- **Public comment:** Substantial comments received in support of both SQ and Industry Option 2. Strong support for Industry Option 2 from self-identified Bay commercial rod and reel fishermen and RISA membership; support for SQ from RICRRAA; no additional support for Industry Option 2.
- **Council:** Motion to recommend adoption of a modified version of Industry Option 1 with an opening date of May 29; passed 6 – 1 (*D. Monti* opposed).

34”	5 fish/person/day (max 5 fish/vessel)	70%	6/8 5/29 – 8/31
		30%	9/8 – 12/31

- **Marine Fisheries:** Marine Fisheries supports the Council recommended option as it is manageable by way of quota monitoring and seemed to be a good compromise between the two juxtaposed options. An added note is that Marine Fisheries would not support Industry Option 2 as the small fall quota would be difficult to manage adequately.
- **Timing to file:** Immediately.

13. **Commercial Striped Bass Floating Fish Traps:**

- **Option 1:** Status Quo

Option	Min. Size	Possession Limit	Season
<u>Option 1:</u> Status quo	26"	Unlimited	4/1 – 12/31

- **Public comment:** None.
- **Council:** Motion to recommend adoption of SQ; passed 6 – 0 (*J. Grant* recused).
- **Marine Fisheries:** Marine Fisheries supports SQ.
- **Timing to file:** N/A (SQ).

14. **Commercial Striped Bass Tags – clarification of tag and reporting requirement:**

- **Final proposed language:**

Commercial Striped Bass Tags: Each individual Striped bass shall be immediately **tagged with a current year striped bass tag by a designated tagging agent at the point of sale.** No Striped bass may be sold unless it has been properly identified with such tag. **Tags shall be available from DFW and DFW may designate tagging agents as appropriate. All designated tagging agents shall keep and maintain the required forms and logs reports specified by DFW. All tag reports and unused tags must be returned to DFW by January 1st of the following year. Failure to return reports and unused tags may result in the tagging agent becoming ineligible to receive striped bass tags in the future.**

- **Council:** Motion to recommend adoption of language as re-written above; passed 7 - 0.
- **Marine Fisheries:** Marine Fisheries supports the proposal as modified per the final proposed language noted above.
- **Timing to file:** Immediately.

15. **Striped Bass Fin-clipping provision:**

- **Options proposed:** 4 options were proposed and modified as follows based on public and DLE comments:

Option 1: **Any striped bass harvested by a commercial license holder while fishing recreationally must have the entire right pectoral fin removed at the time of harvest at a point as close to the body of the fish as possible.**

Option 2: **Any striped bass thirty-four inches (34") and greater harvested by a commercial license holder while fishing recreationally must have the entire right pectoral fin removed at the time of harvest at a point as close to the body of the fish as possible.**

Option 3: **Any person recreationally harvesting striped bass, shall at the time of harvest, have the right pectoral fin removed at a point as close to the body of the fish as possible.**

Option 4: **Any person recreationally harvesting a striped bass 34 inches or larger, shall at the time of harvest, have the right pectoral fin removed at a point as close to the body of the fish as possible.**

- **Public comment:** Support for both option 2 and option 3. DLE in support of option 3 or option 4.

- **Council:** Motion to recommend adoption of option 4 with the following modification:

Any person recreationally harvesting, **and not releasing**, a striped bass 34 inches or larger, shall at the time of harvest, have the **entire** right pectoral fin removed at a point as close to the body of the fish as possible.

Passed 7 – 0.

- **Marine Fisheries:** Marine Fisheries supports option 4 as originally modified and shown above under the heading “options proposed.” After consultation with DEM Legal Counsel and DLE, the added language from the RIMFC was already implicit in the existing language, was similar to language used successfully in MA state regulations, and was therefore deemed redundant and unnecessary to include in the regulatory language.
- **Timing to file:** Immediately.

16. **Dealer regulations – complementary Striped Bass Fin-clipping provision:**

- **Public comment:** None.
- **Council:** Motion to recommend adoption of language as proposed; passed 7 – 0.
- **Marine Fisheries:** Marine Fisheries supports the language as proposed and will assure final language is consistent with the fishery regulations before filing.
- **Timing to file:** Immediately.

17. **General editing of Dealer Regulations:**

- **Public comment:** None.
- **Council:** Motion to recommend adoption of language as proposed; passed 7 – 0.
- **Marine Fisheries:** Marine Fisheries supports as proposed and notes that the restructuring of the regulations is nearing completion.
- **Timing to file:** Immediately.

18. **Proposed adoption of “Part 1 – Definitions” (with repeal of “Part 1 – Legislative Findings”):**

- **Background:** House all definitions in a single location to circumvent the situation where terms are used inconsistently across regulations.
- **Public comment:** None.
- **Council:** Motion to recommend adoption as proposed; passed 7 – 0.
- **Marine Fisheries:** Marine Fisheries supports as proposed.
- **Timing to file:** Await filing until final regulations for Cancer Crab developed, which went to hearing in March 2016.

19. **Proposed REPEAL of RIMFR “Part 17 – Maps”:**

- **Background:**
 - Areas shown in “Maps” contain several inaccuracies;
 - Areas correctly described in other RI Marine Fisheries regulations – there is no net effect of repealing “Maps”;
 - Repeal necessary to avoid inconsistencies;
- **Public comment:** Two comments opposed to repealing Maps if there was not something else in place for fishermen to reference.
- **Council:** Motion to recommend repealing the “Maps” section; passed 7 – 0.

- **Marine Fisheries:** Marine Fisheries supports as proposed and notes that the restructuring of the regulations is nearing completion. Additionally, Marine Fisheries commits to developing a better version of the needed maps on our website, which will be superior to the existing regulation.
- **Timing to file:** Await to file until maps provided on Marine Fisheries webpage.