



**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 21, 2016 [Revised February 7, 2017]

**Re:** Final Decisions Pertaining to November 14, 2016 Marine Fisheries Public Hearing Items

I have received and reviewed your memo to me, dated December 12, 2016 and attached herewith, regarding the public hearing items from the November 14, 2016 public hearing. With that memo, I have also received and reviewed all relevant supporting documentation, including the November 14, 2016 public hearing documents and public comments received, as well as the summary report from the December 5, 2016 meeting of the RI Marine Fisheries Council (RIMFC).

I hereby approve all of the recommendations, as set forth in your memo. With the exception of Item 2, explained herein, all of your recommendations are consistent with the recommendations of the RIMFC, rendered at their December 5, 2016 meeting. The specific regulatory items, and the final decisions for each are as follows:

**1. Commercial Summer Flounder Regulations (Item 1):**

- Decision: Adoption of amended regulations, which:
  - 1) Decrease starting aggregate possession limit for Winter Sub-Period from 2,500 pounds every two weeks to 1,300 pounds every two weeks; and
  - 2) Extend closed days during Summer Sub-Period from Friday/Saturday to Friday/Saturday/Sunday.

I concur with your recommendation, and that of the Council, to maintain the possession limit for the Fall Sub-Period at 100 pounds/day. I also concur with your recommendation to maintain the Council's recommended policy of not dropping the possession limit during the Summer Sub-Period below 50 pounds/day.

**2. Commercial Summer Flounder Regulations (Item 2):**

- Decision: Status quo -- Maintain Summer Sub-Period aggregate program in current form, with no changes to eligibility requirements.
- Comment:
  - I appreciate the Council's recommendation to allow for expanded participation in the summer aggregate program, by eliminating the summer flounder exemption certificate eligibility requirement, to help reduce discard mortality and support more efficient and safe operations. I also recognize that the Council further recommended reducing the trigger for terminating the program from when 80% of the Summer Sub-Period allocation has been landed to when 60% has been landed. However, given the significant reduction in quota for 2017, coupled with the possibility that a change in the aggregate program could cause an increase in catch rates, the risk of an early season closure is a legitimate concern, and is the basis for my decision.
  - My interest in keeping the Summer Sub-period open as long as possible is coupled with my interest in continuing to explore opportunities to better enable participants in the fishery to fish in an efficient, cost-effective, economically viable, and ecologically sound manner, with particular emphasis on reducing discard mortality. With that in mind, I strongly support your recommendation to conduct a workshop in 2017 to evaluate alternative management measures, with the goal of having them ready for public review next fall.

### 3. **Commercial Scup:**

- Decision: Maintain status quo

### 4. **Commercial Black Sea Bass:**

- Decision: Adoption of the amended regulation, which decreases the starting possession limit for Winter I Sub-Period from 1,000 pounds/week to 750 pounds/week.

I also concur with your recommendation, and that of the Council, to maintain the Council's recommended policy of not dropping the possession limit below 50 pounds/day at any point during the year.

### 5. **Coastal Sharks:**

- Decision: Adoption of the amended regulations, as proposed, which allow for the finning of smooth dogfish at sea, provided that smooth dogfish make up at least 25 percent, by weight, of catch aboard the vessel at the time of landing, thereby rendering Rhode Island's regulations consistent with provisions of federal laws and regulations and the ASMFC's Fishery Management Plan for Atlantic Coastal Sharks.

### 6. **Transiting - Shellfish:**

- Filing to occur after final review and approval by the Office of Regulatory Reform. A follow up decision memo will be issued at that time.

7. **Temporary Shellfish Possession Limit:**

- Filing to occur after final review and approval by the Office of Regulatory Reform. A follow up decision memo will be issued at that time.

8. **Process for Modifying Commercial Boat Harvest Schedules in Shellfish Management Areas**

- Filing to occur after final review and approval by the Office of Regulatory Reform. A follow up decision memo will be issued at that time.

9. **Commercial Shellfish – Default Harvest Schedules for Shellfish Management Areas**

- Filing to occur after final review and approval by the Office of Regulatory Reform. A follow up decision memo will be issued at that time.

10. **Horseshoe Crabs:**

- Decision: Adoption of new and amended regulations, as proposed and as further refined by the Council’s recommendations, which:
  - 1) Enact new regulation establishing a 7” minimum size (“prosomal width,” applicable to both commercial and recreational harvests);
  - 2) Enact clarified weekly and monthly reporting requirements for all commercial landings, and new penalty provisions to address instances of non-compliance;
  - 3) Enact strengthened compliance requirements regarding the mandatory return of crabs harvested for biomedical use to the waters from which they were taken, **with compliance placed upon the dealer rather than the harvester**;
  - 4) Enact new regulation prohibiting the harvest of crabs for bait from May 1 through May 31 annually;
  - 5) Repeal the annual moon-based closures during the months of June and July (10 days/month), while maintaining the 96-hour moon-based closures for the bio-medical fishery during the month of May;
  - 6) Enact new regulation, establishing a 60 crab/person/day possession limit, applicable to crabs harvested for bait, except during the month of May, when the possession limit is zero for crabs harvested for bait; and
  - 7) Enact new regulation establishing a control date of January 6, 2017 for the horseshoe crab fishery.
- Comment:

- While the Council recommended a control date of January 1, 2017 for the horseshoe crab fishery, a slightly later date was enacted to ensure that the regulation complies with statutory requirements pertaining to the establishment of control dates.

#### **11. Fish Trap #29**

- Filing to occur after final review and approval by the Office of Regulatory Reform. A follow up decision memo will be issued at that time.



**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: December 12, 2016 [Revised February 7, 2017]

SUBJECT: Request for decisions regarding proposed amendments to the RI Marine Fisheries regulations that were the subject of a public hearing conducted on November 14, 2016 and RI Marine Fisheries Council at their meeting on December 5, 2016.

1. **Commercial Summer flounder:**

• **Proposal 1: Annual review of management options**

- Background: 30% reduction in quota for 2017
- Options presented at hearing:

Option	Min. size	Quota	Sub-period	Starting Poss. limit (vsl/day)	Days closed	Starting Aggregate poss. limit (lbs/vsl)
Option 1	14"	54%	Winter (1/1 – 4/30)	200 lbs	Open 7 days	<del>2,500/bi-week</del> <del>1,700/bi-week</del>
		35%	Summer (5/1 – 9/15)	50 lbs	Fri./Sat./ <del>Sun.</del>	<del>250/week</del> <del>200/week</del>
		11%	Fall (9/16 – 12/31)	100 lbs	Open 7 days	No agg. program
Option 2		54%	Winter (1/1 – 4/30)	200 lbs	Open 7 days	<del>2,500/bi-week</del> <del>1,700/bi-week</del>
		35%	Summer (5/1 – 9/15)	50 lbs	<del>Thu.</del> /Fri./Sat.	<del>250/week</del> <del>200/week</del>
		11%	Fall (9/16 – 12/31)	100 lbs	Open 7 days	No agg. program
Town Dock		54%	Winter (1/1 – 4/30)	200 lbs	Open 7 days	<del>2,500/bi-week</del> <del>1,300/bi-week or</del> <del>90/day</del>
		35%	Summer (5/1 – 9/15)	50 lbs	<del>Mon.</del> /Fri./Sat.	<del>2,500/bi-week</del> <del>No agg. program</del>
		11%	Fall (9/16 – 12/31)	<del>100</del> 70 lbs	Open 7 days	No agg. program

- Public comments: Support for options 1 and Town Dock proposals; no support for Division option #2.
  - Council: Motion passed 4 – 0 in favor of the following (M. Roderick recused):
    - Winter sub-period: 1,300 lbs/bi-week starting aggregate limit;
    - Summer sub-period:
      - 50 lb min. floor (i.e., do not drop to 25 lbs – close instead);
      - Closed days Friday, Saturday, Sunday;
      - Maintain aggregate program
    - Fall sub-period: Maintain current 100 lbs/vsl/day starting limit
  - Marine Fisheries: Marine Fisheries is able to manage all options proposed in this portion of the Council recommendation on summer flounder and therefore support the recommendation of the Council. Additionally we will continue to abide by the policy of not dropping below 50 lbs per day as suggested by the Council.
  - Timing to file: Immediately
- **Proposal 2: Industry proposal to remove summer flounder exemption certificate eligibility requirement to participate in the Summer Flounder Aggregate program for the summer sub-period**
    - Background: Proposal submitted by industry
    - Public comments: A great deal of comment both for and against proposal.
    - Council: Motion passed 4 – 0 in favor of the proposal (M. Roderick recused), with the additional recommendation that the aggregate program close when 60% of the quota has been reached, instead of 80% as currently stipulated.
    - Marine Fisheries: Marine Fisheries will be able to manage the increased aggregate participation, however, the following points need emphasis:
      - Given the Council recommendation that there be a closure of the fishery rather than dropping below a 50 lbs/day possession limit, and based on past simulation work on liberalizing the aggregate requirements, there is additional risk of a fishery closure during the summer;
      - Due to the low quota for 2017, increased participation in the summer aggregate will only result in a minimal decrease in discards. This is further reinforced by the fact that there is no requirement to stop fishing or remove gillnets when the summer aggregate closes.
      - If adopted, this proposal will increase administrative burden on the Marine Fisheries and the Coastal Resource programs, though it is believed this additional burden can be managed adequately with current resources;
      - While Marine Fisheries respects the Council’s desire to try a new management program for summer flounder, given the severity of the quota reduction in 2017 it may not be the best year to experiment with this type of a program if there is a desire to avoid or minimize a closure in 2017;
      - Given the interest in new management strategies for summer flounder as expressed by the Council, Marine Fisheries recommends a workshop in 2017 to discuss other potential management measures in the context of a Management Strategy Evaluation (MSE) for commercial summer flounder in RI.
    - Timing to file: Immediately

### 3. **Commercial Scup:**

- Background: 6% reduction in quota
- 1 option proposed - status quo
- Public comments: No comments.
- Council: Motion passed 5 – 0 in support of status quo.
- Marine Fisheries: Support remaining at status quo as proposed and recommended by Council.
- Timing to file: Immediately

### 3. **Commercial Black sea bass:**

- Background: No major changes effecting quota from the ASMFC for black sea bass as understood at the current time, but there may be changes pending the outcome of the current benchmark assessment process.
- 1 option proposed - status quo
- Public comments: Support for both a 50lb and 25lb limit minimum floor during the spring and summer periods.
- Council: Motion passed 5 – 0 in support of status quo; with added recommendation to amend the starting possession limit for the Winter 1 sub-period from 1,000 to 750 lbs/vsl/week. The Council went on to advise the Department to not drop below a 50 lbs/day limit
- Marine Fisheries: Supports status quo and the Council recommendation to adjust the Winter 1 sub-period starting possession limit from 1,000 to 750 lbs/vsl/week.
- Timing to file: Immediately

### 4. **Coastal sharks:**

- Background: Division proposal to maintain ASMFC and federal FMP compliance.
- Public comments: Comments were offered highlighting a difference of opinion as to whether the proposed language meets the goal as stated in the background section
- Council: Motion passed 5 – 0 in support as proposed.
- Marine Fisheries: Support as proposed and as recommended by the Council. Marine Fisheries carefully considered the comment regarding consistency with federal and ASMFC plans and have determined that the proposal is consistent.
- Timing to file: Immediately

### 5. **Transiting (Part 4 - Shellfish):**

- Background: Proposed from industry in order to assure compliance when harvesting ocean quahaugs in federal waters and transiting RI waters in excess of the state possession limit.
- Public comments: None
- Council: Additional revision offered at Council meeting (see below) based on discussions with the Division of Law Enforcement. Motion passed 5 – 0 in support of the following language:

(A) During the closure of a Rhode Island state allocated fishery quota, a federally permitted vessel fishing in the Exclusive Economic Zone may traverse Rhode Island state waters for the purpose of landing that species in another state, provided the vessel is in compliance with their federal permit, and ~~the vessel nets~~ **all gear capable of harvesting shellfish** ~~are stowed pursuant to the stowage of nets provisions as provided for in RIMFR Part 3—~~ **Finfish is stowed and not engaged in the act of taking or harvesting while transiting state waters.**

(B) A federally permitted vessel fishing in the Exclusive Economic Zone may traverse Rhode Island state waters for the purpose of landing a species in Rhode Island, provided that the species in possession do not have a state allocated quota that is currently closed, provided the vessel is in compliance with their federal permit, **and** provided ~~the vessel nets~~ **that all gear capable of harvesting shellfish** ~~are stowed pursuant to the stowage of nets provisions as provided for in RIMFR Part 3—~~ **Finfish is stowed and not engaged in the act of taking or harvesting while transiting state waters**, and provided that the owner or operator possesses a valid RI Landing License pursuant to DEM’s “Commercial and Recreational Saltwater Fishing Licensing Regulations”.

- Marine Fisheries: Support the above language as recommended by the Div. of Law Enforcement and Council.
- Timing to file: Immediately

6. **Temporary shellfish possession limit:**

- Background: Obsolete regulation.
- Public comments: None
- Council: Motion passed 5 – 0 in support of removing the regulation as proposed.
- Marine Fisheries: Support as proposed and recommended by Council.
- Timing to file: Immediately

7. **Clarification of process to amend commercial boat harvest schedules in Shellfish Management Areas (i.e., “Winter Management Areas”):**

- Background: Division proposal to re-locate language so as to apply more broadly to Shellfish Management Areas other than Greenwich Bay; namely Bissel Cove/Fox Island and Bristol harbor.
- Public comments: None
- Council: Motion passed 5 – 0 in support of amendment as proposed.
- Marine Fisheries: Support as proposed and recommended by Council.
- Timing to file: Immediately

8. **Minor editing and clarifications:**

- Clarification of default harvest schedule in Winter Management Areas:
  - Background: Minor clarification
  - Public comments: None
  - Council: Motion passed 5 – 0 in support as proposed. Additional revision recommended to add prohibition of harvest on Christmas and New Year’s holiday for Bissel/Fox Island SMA.
  - Marine Fisheries: Support as proposed and recommended by Council.

- Timing to file: Immediately
- Clarification of minimum size of soft-shell clam
  - Public comments: None
  - Council: Motion passed 5 – 0 in support of maintain current language as is written this way in statute, and also adding proposed language as is commonly used. Either measurement may be used.
  - Marine Fisheries: Support as proposed and recommended by Council.
  - Timing to file: Immediately

## 9. Horseshoe Crabs:

- Background: Division and industry proposals for improved management. Save the Bay provided a proposal after the date of noticing with the Sec. of State. As is standard procedure for all proposals received after the date of notice and prior to the date of the workshop, this proposal was added to the workshop and hearing presentations for consideration.
- Public comments: Varied
- Council:
  - 1<sup>st</sup> motion passed 5 – 0 in support as follows:
    - 7” min. size as proposed;
    - Improved reporting and reporting compliance measures as proposed;
    - Improved compliance on return provisions for crabs bled for bio-medical, with the modification that compliance requirements be placed with the bio-medical facility/dealer and not the harvester;
    - Adjust sub-period quota resulting from over-harvest in prior sub-period as proposed.
  - 2<sup>nd</sup> motion passed 4 - 0 -1 in support as follows (J. Grant abstention):
    - Prohibit bait harvest May 1 through May 31 annually and maintain the current moon based closures for bio-medical harvest during the month of May (eliminate moon based closures for the months of June and July for both bio-medical and bait.
  - 3<sup>rd</sup> motion passed 4 – 1 (J. Grant opposed) to recommend a possession limit for bait crabs of 60/day.
  - 4<sup>th</sup> motion regarding the proposal to establish a moratorium on the issuance of harvest permits to those persons who previously had not participated in the fishery, this proposal passed 4 – 1 (M. Roderick opposed) to establish a control date of January 1, 2017 for the horseshoe crab fishery.
- Marine Fisheries: Support as recommended by the Council. The over-harvest provision (fourth bullet in Council’s first motion) became moot when the Council opted not to recommend adoption of the sub-period proposal offered by industry for the bait fishery. Marine Fisheries will maintain its long-standing practice of deducting any overages from the subsequent-year bait-fishery quota; a regulatory clarification will also be initiated in 2017 to codify this provision. During its deliberations on its second motion, the Council urged Marine Fisheries to address and strengthen the prohibition on the harvest of bio-medical crabs for use as bait. Marine Fisheries will address this issue administratively, and report back to the Council if further regulatory action is deemed necessary.
- Timing to file: Immediately

10. **Fish Trap # 29:**

- **Background:** The Division starting receiving phone calls regarding a fish trap being placed in the vicinity of Chase Point in the town of Little Compton. Inspection of the trap revealed that a fish trap had been placed in this location by an operator, who was issued a permit to utilize fish trap location #29. At that time it was explained to the fish trap owner in writing that the trap was located incorrectly, and was then also provided with the correct location. The owner disputed this claim, which revealed that the regulation containing the written description of the location of fish trap # 29 (*“Part 6 - General Equipment Provisions”*) was inaccurate, in that the written description was inconsistent with the coordinates as written and as shown in in *Part 17 – Maps*. The Division then endeavored to locate an alternate authorized fish trap site that the owner could utilize, however all such proposals were rejected by the owner.
- **Public comments:** The owner, vessel captain, and deckhand were present at the hearing and expressed strong objection with re-locating from the waters in the vicinity of Chase Point, and expressed safety concerns with the location as officially sited. Finally, the owner noted the financial hardship created by differences in site characteristics between where he set the net and the official location, which would require him to modify his gear at great expense. Several written comments were provided, mostly residents from the Chase Point area, in strong opposition to the siting of the trap in the waters in the vicinity of Chase Point.
- **Council:** No motion or recommendation was provided.
- **Marine Fisheries:** Support as proposed. The site off of Chase Point is not an approved fish trap location, and the inaccuracy of the regulation does not constitute in any way the authorization of this site. New fish trap locations not currently authorized are not permitted per statute.
- **Timing to file:** Immediately