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## DIVISION OF FISH AND WILDLIFE

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TO: Mark Gibson, Deputy Chief Marine Fisheries, DFW

FROM: W. Michael Sullivan, Director DEM

DATE: December 9, 2010

SUBJECT: Decision on November 10, 2010 Marine Fisheries Hearing Items

**I have read the Division's recommendations and the record of public hearings and have made modifications to the recommendations and those are approved by me and signed as contained herein.**

Proposed regulatory changes pertaining to (1) summer flounder quota management (2) 2011 summer flounder sector allocation pilot program, (3) the control date for the commercial summer flounder fishery, (4) scup quota management, and (5) black sea bass quota management, have moved through the regulatory process and are hereby presented for final decision.

These matters were the subject of a public hearing held on November 10, 2010, and subsequent consideration by the RI Marine Fisheries Council at their December 6, 2010 meeting. Supporting documentation submitted along with this memorandum include the, public hearing summary document, summary of public hearing comments, and the applicable portion of the minutes from the RIMFC December 6, 2010 meeting. The proposed changes are summarized below.

*Having reviewed the entire record, and conferred with staff, I hereby urge adoption of the proposed changes as noted below. If you concur, please indicate by signing this memo at the end and returning it to me. Upon receipt of the signed memo, I will initiate the filing process. If you wish to make any changes that differ from those proposed, please delineate those changes via a separate memo.*

**Summer flounder quota management proposals:** There were several proposals for the 2011 summer flounder quota management plan that were brought forward for public comment. The first was a proposal for the starting possession limits to remain at status quo in 2011; the second was to change the starting possession limits for the winter 1 sub period, remove the dealer section of the aggregate program, modification of the Aggregate Landings Program trigger, and

logbook requirement. These combined proposals came from the Division and suggested raising the sub period starting possession limits in the winter 1 sub period to 300 pounds/day (from 200 pounds/day) or 3,000 pounds/week (from 2,000 pounds/week) for the aggregate program, remove irrelevant dealer language from the aggregate program, modify the Aggregate Landings Program trigger to 90% (from 80%), and establish volunteer enrollment in the **e-Trip electronic logbook program**. The third proposal was to remove the Friday & Saturday closures in the summer sub period. The fourth proposal was to split the summer period into two sub periods with equal allocations, which would be May 1 through August 31 with a 17.5% allocation and September 1 through October 31 with a 17.5% allocation. The fifth proposal was to reallocate additional pounds for 2011 with bias toward the summer period in the following manner: winter 1 = 25%; summer = 50%; winter 2 = 25%. The last proposal was to repeal or modify the 3-year penalty provision from the aggregate landing program.

There were a number of public comments made on the various proposals with the majority of commercial fishermen supporting the second proposal. Most people were in favor of increasing the winter 1 sub period to 300 pounds per day and 3,000 pounds per week. For the summer sub period most people were in support of 100 pounds per day however there was a proposal to increase the aggregate from status quo 350 pounds per week to 450 pounds per week if the Friday and Saturday closures remained during the summer sub period.

The commercial fishing industry was in support of removing the Friday and Saturday closures during the summer sub period claiming that the increase in quota would justify the removal of these closures. The recreational fishermen and a few commercial fishermen were opposed to removing the Friday and Saturday closures noting there would be increased commercial pressure on the fishery during the weekend when recreational fishermen were trying to fish and some commercial fishermen were concerned that the quota would be used up too fast, requiring a drop in the possession limit to 50 pounds per day. There was consensus among commercial fishermen that the possession limit should not be less than 100 pounds per day.

There seemed to be consensus with the public hearing audience that they were opposed to proposals 4 (splitting the summer periods), 5 (Reallocating additional pounds for 2011 with bias toward summer period), and 7 (repeal/modify the 3-year penalty provision from the aggregate program). However, the RICRRA called for the penalty provision to be reviewed and refined such that major and a minor violation would be distinguishable and treated as such during qualification.

The summer flounder advisory panel (AP) voted 2 to support and 5 opposed on the proposal to reopen the Friday and Saturday closure days. Those that were opposed felt that opening Friday and Saturday would use up the quota earlier in the season forcing the possession limit back to 50 pound per day.

The Division recommends maintaining the status quo sub-period allocation formula but increasing the starting possession limits for 2011. Staff has modeled starting possession limits, including a participation variable, with the objective of keeping sub-periods open at a minimum 100 lb limit. The Division recommends increasing the winter I starting limit from 200 to 300 pounds per day and from 2,000 to 3,000 pounds per week for the aggregate program. Starting

limits for summer and winter II should remain at 100 and 600 pounds respectively. This should allow for complete harvest of the allocations with as little mid-season adjustment as possible. The Division supports eliminating the Friday and Saturday closure. We cannot quantify any benefits to rod and reel fisheries from maintaining the closure. The Division does see clear business flexibility and safety benefits associated with a 7 day fishery for the commercial sector. The Division does not support a summer accumulation trigger whereby the 100 lb limit would be reduced to 50 lbs. Given the inherent time delays in the SAFIS and RSA quota tracking systems, we cannot precisely determine when a particular percentage is reached to enact such a fine-scale adjustment. Further, a limit as small as 50 pounds may perturb participation levels, reduce landings rate, and so require large end-of-period possession limit increases. We recommend that the 100 pound limit remain in effect until the end of the sub-period or until the allocation has been reached. Two final Division recommendations would be to drop the three-year violations provision and allow the use of electronic logbooks in lieu of paper logbooks if supported by the RIDEM Enforcement Division.

At the December 7, RIMFC meeting the Council voted (4) in support to (1) opposed, to recommend that the Director remove the Friday and Saturday closures in the summer sub period. They also voted unanimously to recommend that the Director adopt the Division's proposal (proposal #2) with one change, to increase the possession limit for the summer sub period from 350 pounds per week to 500 pounds per week in light of the reopening Friday and Saturday. This option included the following: in the winter 1 sub period during the aggregate period 300 lbs/day or if in the aggregate landing program 3,000 lbs/week. The summer sub period would then be set at 100 lbs/day or if in the aggregate program 500 lbs/week. For the winter 2 sub period, the possession limit would be 600 lbs/day. This proposal also removed irrelevant dealer language from the aggregate program; modified the aggregate landings program trigger from 80% to 90%; and modified the logbook requirement to allow an exemption for volunteer enrollment in the e-Trip electronic logbook program. The Council had no interest in repealing the 3-year penalty provision and DFW defers to RIDEM Division of Enforcement on this issue.

*As supported by the Council, I approve increasing the winter I starting limit for summer flounder from 200 to 300 pounds per day and from 2,000 to 3,000 pounds per week for those in the aggregate program. Starting possession limits for the summer sub period will remain at 100 lbs/day or if in the aggregate program increased from 350 lbs/week to 500 lbs/week. The starting limit for winter II shall remain at 600 pounds. I reject eliminating the Friday and Saturday closures and allowing the use of electronic logbooks in lieu of paper logbooks, but approve eliminating the unnecessary dealer section of the aggregate landing program, and approve modifying the aggregate landings program trigger from 80% to 90%. A Friday and Saturday opening, while attractive from a business flexibility standpoint, carries the risk of increasing effort such that a reduction to 50 pounds per day or outright closure might be needed during the summer. It is my intent for the summer fishery to remain open at the 100 pound limit. Retaining the Friday and Saturday closure makes this probable given the 2011 increase in state quota. The closure can be re-evaluated for 2012 with 2011 summer performance in hand. With regard to reporting, I note that federal vessel trip reports are required of federal fishers who constitute the majority of participants in the aggregate program and the attractiveness of all electronic filings but until resources are available that*

*allow RIDEM Division of Enforcement to have 'real time' knowledge of landings approving electronic logbooks is unwise .*



**Affirmed as modified above**



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**W. Michael Sullivan, Director**

**12/9/2010**

**Date**

**Proposal to continue/expand/modify the summer flounder sector allocation program in 2011:** There were three proposals that were brought forward for public comment. The first was a proposal for continuation of the summer flounder sector allocation pilot program into 2011 with the program running from January 1 through December 31. The second proposal was to repeal or modify the 3-year penalty provision. The third proposal was adoption of a percentage cap on the size of individual sectors.

All of the individuals that spoke at the public hearing were opposed to all three proposals. They were opposed to the continuation of the of the fluke sector pilot program, repealing the 3-year penalty provision, and opposed to the adoption of a percentage cap on the size of individual sectors. Some individuals called for the sector pilot program to be terminated. The RICRRA called for reevaluation and refinement of the penalty provisions expressing concerns about major and minor violations. Others questioned the language associated with the adoption of a percentage cap on the size of individual sectors. The majority commented that there should be a percentage cap of allocated quota for the total sector allocation program not for single sectors.

The summer flounder AP was in support of continuing the summer flounder sector allocation pilot program and allowing it to be a full year program.

The Division supports the continuation of the summer flounder sector allocation pilot program into 2011 with the program running from January through December. Further, the DFW recommends that this be the final year of the pilot project to be conducted in parallel with a series of roundtable meetings in the coming year to evaluate sector and alternative management programs for 2012 as set forth at the RIDEM November 4, 2010 roundtable meeting.

The Council voted (3) in support, (1) opposed, and (1) abstained, to approve the motion to recommend that the Director continue the summer flounder sector allocation pilot program in status quo format with the program running from January 1 through December 31.

***As recommended and supported by the Council, the Summer Flounder AP, and the Division, I approve continuation of the summer flounder sector allocation pilot program for 2011 with the program running from January 1 through December 31. At this time, I do not approve***

*adoption of a percentage cap on the size of individual sectors or removing the 3-year penalty provision.*



**Affirmed as modified above**



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W. Michael Sullivan, Director

12/9/2010

Date

**Proposal to modify the control date for the commercial summer flounder fishery:** The Division proposed to modify the control date for the commercial summer flounder fishery to December 31, 2010 (from December 31, 2009).

All individuals that spoke at the public hearing were opposed to having a control date and were in support of eliminating the control date from the summer flounder fishery.

The Division recommends advancing the December 2009 control date one year to December 2010. This would provide a clear, retrospective block of SAFIS data reporting years that could be considered for participation history should the 2011 roundtable forums indicate a desirability to move forward with further sectors in the summer flounder and/or other quota managed fisheries.

The Council voted (3) in support and (2) opposed, to recommend that the Director modify the control date for the commercial summer flounder fishery to December 31, 2010.

*As supported by the Council, I adopt advancing the control date one year from December 31, 2009 to December 31, 2010.*



**Affirmed as modified above**



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W. Michael Sullivan, Director

12/9/2010

Date

**Scup quota management proposals:** There were three proposals that were brought forward for public comment. The first was a proposal for the starting possession limits to remain at status quo in 2011; the second was to increase starting possession limits, remove the permitting requirement for the winter scup aggregate program, change the winter 1 program from a biweekly to a single week program, modify the sub period language from hard dates to more flexible language to accommodate the aggregate program, and repeal or modify the current logbook requirement to allow fishermen to avail themselves of electronic logbook reporting. These combined proposals came from the Division. The third proposal also came forward from

the Division and recommended reestablishing the DFW authority to move quota from the floating fish trap allocation into the general category fishery.

At the public hearing a number of individuals supported proposal #2 (Division recommendations to increase starting possession limits, etc.). There was a recommendation to support proposal #2 but have the possession limit for all three summer periods the same, between 0 and 700 pounds per week. Another individual supported a proposal for the summer periods to be not less than 100 pounds per day and 700 pounds per week throughout the season.

Regarding proposal #3 (reestablishing DFW authority to move quota from floating fish traps to general category), the consensus at the public hearing was for the DFW to meet with the floating fish trap people and set a specific roll over date.

The Division recommends increasing the starting possession limits for the commercial scup fishery. The Division had recommended an initial set of increased possession limits under proposal 2 to the AP. With experience of the 2010 state portion of the fishing year complete and anticipating a 42% increase in quota for 2011, the DFW recommends increasing those starting possession limits to the following:

- i. Spring sub period – 1,000
- ii. Summer sub period - 700
- iii. Fall sub period – 700.

The Division also recommends allowing the winter I possession limit period to change from two weeks to one week (ASMFC program) and removing the permit requirement for the winter aggregate program. Another Division recommendation would be for allowing the use of electronic logbooks in lieu of paper logbooks if supported by the RIDEM Enforcement Division. As a final recommendation the Division recommends reestablishing the DFW authority to move allocation from the floating fish trap (FFT) sector to the general category sector when it is clear the FT sector will not catch their allocation. That authority should begin on June 15<sup>th</sup>. The DFW agrees to include the language as presented at the public hearing regarding the written correspondence to notify trap companies when the authority is exercised.

The Council voted unanimously to recommend that both (proposal #2) and (proposal #3) pertaining to scup quota management go forward to the Director for adoption. Proposal #2 included the following: changing the winter 1 program from a biweekly program to a single week program at 30,000 pounds, remove the permitting requirement for the winter scup aggregate program, modify the sub period language from hard dates to more flexible language to accommodate the aggregate program, and repeal or modify the current logbook requirement to allow electronic logbook reporting. Starting date and possession limits as follows:

- Winter 1 (January 1- April 30) between 0 and 30,000 lbs/week
- (May 1 - July 3) between 0 and 700 lbs/week
- (July 3 – September 18) between 0 and 500 lbs/week
- (September 18 – October 31) between 0 and 500 lbs/week
- (Winter 2 (November 1 – December 31) 2,000 lbs/day

This motion also included recommending that the Director adopt proposal #3, which was the Division recommendation to reestablish the DFW authority to move quota from the floating fish trap allocation into the general category fishery.

*As supported by the Council, I adopt changing the winter 1 possession limit period from a two week program to a one week program and to remove the permit requirement for the winter aggregate program. The starting possession limit for the scup winter 1 period would be 30,000 pounds per week and the starting limits for spring, summer, and fall should be increased to 1,000 pounds per week, 700 pounds per week, and 700 pounds per week respectively. These limits are greater than recommended by council but reflect the most recent assessment by the Division of scup catch rates and 2011 quota available. I approve the reestablish the DFW authority to move allocation from the scup floating fish trap (FFT) sector to the scup general category sector when it is clear the FFT sector will not catch their allocation. Since no date was specified by the Council I suggest that authority should begin on June 15<sup>th</sup>.*



Affirmed as modified above



W. Michael Sullivan, Director

12/9/2010

Date

**Black sea bass quota management proposals:** Four proposals for 2011 black sea bass quota management were brought forward for public comment. The first was a proposal to remain at status quo for 2011, and the second was to extend the length of the August closure starting from July 20 through August 31. The third proposal was to develop an aggregate program modeled after the scup summer program. The fourth proposal was to increase the starting possession limit from 50 to 100 pounds per day in the spring through fall sub periods.

Comments provided at the public hearing were in support of either proposal #1 (status quo) or proposal #2 (extend length of the August closure). People were opposed to proposal #3 (develop an aggregate program), and proposal #4 (increase possession limits in spring through fall periods). One suggestion was to expand the closure period even more in proposal #2, from the proposed July 20 date to July 15. This would be a closure from July 15 through August 31. Another proposal was offered (proposal # 5) for a possession limit of 25 pounds per day and leave it open all summer. Once this proposal was offered many individuals voiced support for this proposal because it would keep the fishery open longer.

The Division did not have any recommendations other than status quo. The issue remains a very small quota that does not allow for a continuous open season with a reasonable possession limit.

The Council voted unanimously to recommend that the Director adopt a modified proposal #4 for the black sea bass management plan, which was 750 pounds per day in the winter 1 sub period; 25 pounds per day in the spring and summer sub periods with no August closure; and 250 pounds per day in the winter 2 sub period.

*I approve the adoption of a status quo position for black sea bass commercial specifications in 2011. The quota assigned to the state is small and does not allow for consideration of custom alternatives. The council's recommendation to drop from 50 to 25 pounds in the summer is based on a desire to remain open. It however would foreclose on any remaining opportunity for profitable fishing on sea bass. Under 50 pounds, businesses will anticipate a closure and plan accordingly.*



**Affirmed as modified above**



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W. Michael Sullivan, Director

12/9/2010

Date