



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: July 27, 2017

Re: Final Decisions Pertaining to June 12, 2017 Marine Fisheries Public Hearing Items

I have received and reviewed your memo to me, dated July 17 and attached herewith, regarding the public hearing items from the June 12, 2017 public hearing. With that memo, I have also received and reviewed all relevant supporting documentation, including the June 12, 2017 public hearing documents and public comments received, as well as the summary report from the June 26, 2017 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 Items 2 and 8, explained herein, all of your recommendations are consistent with the recommendations of the RIMFC, rendered at their June 26, 2017 meeting. The specific regulatory items, and the final decisions for each are as follows:

1. Recreational Black Sea Bass

- Decision: Adoption of the amended regulation, as proposed, which reduces the daily possession limit from 7 fish/person/day to 5 fish/person/day from November 1 through December 31.

2. Commercial Monkfish

- Decision - Issue 1: Adoption of the amended regulation, as proposed, which increases the daily possession limit from 550 lbs tail/1,826 lbs. whole per vessel per day to 700 lbs tail/2,037 lbs. whole per vessel per day.
- Comment: As noted in your memo, I recognize that the conversion factor (tail to whole weight) used in the final federal monkfish FMP has been revised since our public notice and hearing and the RIMFC meeting, and is now 2.91, instead of 3.32. As such, the adjusted conversion for whole weight is 2,037 lbs., instead of 2,324 lbs. as noticed. I acknowledge and support this change as a technical adjustment to the final, revised regulations.

- Decision - Issue 2: Postpone adoption of aggregate program.
 - Comment: While I support the concept of a weekly limit for this fishery, and appreciate the recommendation offered by the Division and Council to pare back the limit from 4,900 lbs tail/2,324 lbs. whole to 3,500 lbs tail/11,620 lbs whole per vessel per week, I note (1) that the Division is pursuing the development of software that would provide for better accountability and ease enforcement for our aggregate programs, and (2) that the recommendation from the Division and Council differed from that which was noticed and was thus not thoroughly vetted with industry. For these reasons, I find that it would be best to await the development of the software, and re-notice the proposal, ideally in advance of the 2018 fishing year, to help ensure that it meets the needs and interests of the industry, as well as our enforcement program. As such, I direct that regulations only be filed with regard to Issue 1 (daily possession limits), and that those pertaining to Issue 2 (weekly limits) be held in abeyance, and re-noticed at the appropriate time.

3. Gillnet Tagging

- Decision: Adoption of the amended regulations, as revised and recommended for adoption by the Council, which modify the location where tags must be attached to gillnets:

4. Gillnetting prohibition off Block Island

- Decision: Repeal of the regulation that prohibits gillnetting in a designated area east of Block Island from November 1 to December 31, annually.

5. Fyke Net Registration

- Decision: Adoption of the amended regulation, as proposed, which replaces the fyke net registration requirement with a fyke net permitting requirement.

6. Seine Net Prohibition in Vicinity of Coastal Salt Pond Channels

- Decision: Adoption of the amended regulation, as proposed, which clarifies the seine net prohibition in the vicinity of coastal salt pond channels.

7. Determinations by Dealers of Quantities Landed by Harvesters

- Decision: Adoption of the amended regulation, as proposed, which clarifies the point at which dealers must account for the quantity of product obtained from harvesters.

8. Specification of Records To Be Maintained By Dealers for all Transactions Involving Harvesters [Sellers]

- Decision: Adoption of new regulations, as proposed, which require dealers to maintain a record of transaction for all sales of marine species obtained from harvesters [sellers], including: seller's name; seller's commercial fishing license number; date of purchase; species landed; quantity of purchase; and signature [of seller]. *The effective date for this new regulation shall be May 1, 2018.*
- Comment: I recognize and appreciate that the Council, backed by public comment, recommended adoption the regulations, as proposed, without the requirement for obtaining and maintaining the seller's signature. Upon review, I find that provision to be an important and necessary means of achieving accountability for all transactions. I have therefore decided to retain it. However, with a view to affording the Division time to work through the issue, I have directed that the effective date of the regulation to be delayed until May 1, 2018. Between now and then, I call upon the Divisions of Marine Fisheries and Law Enforcement to host a workshop for the purpose of developing options/mechanisms that will be considered compliant with the signature requirement. The goal is to enable harvesters to meet the signature requirement without being unduly inconvenienced. Ultimately, I recognize that a swipe-card system can and should be adopted that will allow for transactions to be recorded electronically, and thereby obviate the need for a signature. Until then, I am confident that the Divisions, working closely with industry, can identify appropriate and convenient means for meeting the signature requirement.

9. Specification of Records to be Maintained by Dealers for all Transactions Involving Harvesters [Sellers] of Shellfish

- Decision: Adoption of the new regulations, as proposed, which require shellfish dealers to maintain a record of transaction for all sales of shellfish obtained from harvesters [sellers], including: seller's name; seller's commercial fishing license number; seller's date of birth, harvest tagging area where shellfish were harvested; quantity of shellfish purchased; species landed; purchase price; date and time of transaction; and signature of seller.
- Comment: I note, as you do in your memo, that these regulations are already in effect under regulations promulgated by the Division of Law Enforcement. Moving them over to the Dealer Regulations, as proposed, will help to streamline and consolidate all DEM dealer regulations under one heading.

10. Specification of Records to be Maintained by Dealers for all Transactions Involving Shellfish Cultured on an Aquaculture Lease Site

- Decision: Adoption of the amended regulations, as proposed, which (1) clarify that dealers shall maintain complete, accurate, and legible records sufficient to document and trace the source of all cultured shellfish back to the aquaculture lease site from which they came, including the date of harvest; and (2) replace the requirement that

transactions be recorded in a permanently bound ledger book with a requirement that transactions be recorded via a method approved by DEM and DOH.

11. Wet Storage of Shellfish

- Decision: Adoption of the amended regulations, as proposed, which provide for consistency between DEM and DOH regulations governing wet storage of shellfish by (1) defining land-based wet storage as that defined by the National Shellfish Sanitation Program model ordinance, which is incorporated by reference, (2) requiring prior written authorization from DOH in order to engage in land-based wet storage, (3) prohibiting open-water wet storage, as defined by the National Shellfish Sanitation Program model ordinance, and (4) repealing all other DEM regulations pertaining to wet storage of shellfish as duplicative with DOH's "*Rules and Regulations Pertaining to the Processing and Distribution of Shellfish*."

12. Handling and Tagging of Shellfish by Dealers

- Decision: Adoption of the amended regulations, as proposed, which provide for consistency between DEM and DOH regulations governing the handling and tagging of shellfish by dealers by (1) requiring dealers to comply with the National Shellfish Sanitation Program model ordinance and DOH "*Rules and Regulations Pertaining to the Processing and Distribution of Shellfish*", both of which are incorporated by reference, and (2) repealing all other duplicative DEM dealer regulations pertaining to the handling and tagging of shellfish.

13. Selling and/or Processing or Preparation of Seafood for Direct Sale to Consumers

- Decision: Adoption of the amended regulation, as proposed, which clarifies the provision allowing any seller or processor of seafood to sell directly to consumers without a DEM license, provided that the seafood was obtained from a licensed dealer.



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: July 17, 2017

SUBJECT: Decisions regarding proposed amendments to the RI Marine Fisheries regulations that were the subject of a public hearing conducted on June 12th and RI Marine Fisheries Council (RIMFC) meeting on June 26th.

2. **Hearing item 1a. - proposal to amend the seasons and possession limits for recreational Black Sea Bass:**

- Background: Proposal (option 1) originated from recent amendments to the FMP for Black sea bass.
- Options presented:

Option	Min. size	Season	Possession limit (person/day)
Current management	15"	5/24 – 8/31	3 fish
		9/1 – 9/21	7 fish
		9/22 – 10/21	CLOSED
		10/22 – 12/31	7 fish
<u>Option 1:</u>	15"	5/24 – 8/31	3 fish
		9/1 – 9/21	7 fish
		9/22 – 10/21	CLOSED
		10/22 – 12/31 <u>10/31</u>	7 fish
		<u>11/1 – 12/31</u>	<u>5 fish</u>

- Public comments: RISAA support for Option 1.
- RIMFC: 7 – 0 in support of option 1.
- Marine Fisheries: Support for option 1 as it is an ASMFC and MAFMC compliance measure. The impact of this is relegated predominantly to the party and charter industry

during this time of year, so we need to determine the best way to disseminate information about this change as our abstract and magazines have been published with the original regulation of allowing 7 fish.

- Timing to file: Immediately.

3. **Hearing item 1b. - proposal to amend the commercial possession limit for Monkfish:**

- Background:
 - Option 1: Proposal originated from recent amendments to the FMP for Monkfish.
 - Option 2: Industry proposal to establish an aggregate/weekly possession limit.
 - Option 3: Division proposal to develop a program similar to the federal program in response to option 2.
- Options noticed:

Option	Possession limit
Current management	550 lbs tail/1,826 lbs whole (vsl/day)
<u>Option 1:</u> Status quo with increased possession limit per FMP	<u>700 lbs tail/2,324 lbs whole</u> (vsl/day)
<u>Option 2:</u> Weekly possession limit	<u>4,900 lbs tail/16,268 lbs whole (vsl/week)</u>
<u>Option 3:</u> To develop a program to match the federal allowance for taking of a double possession limit (the aggregate of two daily limits during one trip) once during each calendar week. If a double limit is taken, one other day of fishing will be forfeited during that week.	

- Public comments: Support for options 1 and 2.
- RIMFC: 7 – 0 in support of **option 2, modified to be 5 times the daily limit, or 3,500 lbs/vsl/week tail weight or 11,620 lbs/vsl/week whole weight.**
- Marine Fisheries: Support for option 1 with the potential addition of option 2 as modified and recommended by the RIMFC. Option 1 is an increase in daily possession limit based on recent amendments to the FMP for monkfish, therefore this adjustment is compliant with the federal plan for monkfish and provides a benefit to our fishermen.

While the Division appreciates the concerns noted during the public process by the Division of Law Enforcement regarding their ability to enforce aggregate/weekly possession limits, such weekly possession limits are currently in place with other species (scup and bluefish), and the number of participants in this fishery is limited, therefore we do not see a reason to not allow this program to proceed at this time. It is important to note that software is being investigated by the Division that will remedy some of the issues noted by enforcement moving forward, we believe this technological fix may be ready for the beginning of 2018.

Due to the difficulty with tracking and enforcement, the Division recommends holding off on a complex program like option 3 until the software mentioned above is developed.

NOTE: The conversion factor used in the final FMP has been revised and is now tail weight multiplied by a scalar of 2.91 (was 3.32), so the 700 lb tail weight now converts to **2,037 lbs whole weight**.

- Timing to file: Immediately

11. **Hearing item 2a. - proposal to amend the gill net tagging requirements (section 6.5.3(E)(6)):**

- Background: Industry proposal to amend the location of the tags so as to prevent unnecessary breakage that is presently occurring due to poor quality of tags.
- Noticed language: Tags shall be attached to the **float vertical lines beginning at the westernmost each end of each net string. (as measured on a compass circle from magnetic south through west to, and including, north) exceed every 300 linear feet. The net on the easternmost end of each string as measured on a compass circle from magnetic north through east must have a tag adjacent to the buoy line. The total number of tags must equal the total number of each of the individual 300 foot nets in the string. Each individual string of 450 foot nets shall require two (2) tags. Tags shall be attached to both the bottom and top of the vertical line of the string.**
- Public comments: Support for changes to location of tags due to poor quality/ease of breakage with existing tags.
- RIMFC: 7 – 0 in support of the following revised language in response to additional clarifications as provided by the Division: “Tags shall be attached to ~~the float line beginning at the westernmost end of each net (as measured on a compass circle from magnetic south through west to, and including, north) exceed every 300 linear feet. The net on the easternmost end of each string as measured on a compass circle from magnetic north through east must have a tag adjacent to the buoy line~~ **both vertical lines of a string of gill nets at the point proximate to where the bridle is joined to the vertical line. Tags shall be equally distributed between vertical lines, the difference of the number of tags on each vertical line shall not exceed one tag. One tag must be attached for every 300 linear feet of net used in a string.**”
- Marine Fisheries: Support of revised language as recommended by the RIMFC.

NOTE: At the request of industry, this matter will be brought to hearing again in November in order to propose an improved more durable type of tag.

- Timing to file: Immediately

12. **Hearing item 2b. - proposal to delete the regulation regarding a gillnet prohibition in Block Island waters (section 6.5.3(K)(7)):**

- Background: Industry proposal to remove the rule as outdated.
- Public comments: Support as proposed.
- RIMFC: 7 – 0 in support as proposed.
- Marine Fisheries: Support as proposed and recommended by the RIMFC. The Division has learned from the RIMFC that the regulation was developed in the 1980’s to protect the cod fishery, and is no longer relevant due to new management measures implemented for the state waters cod fishery (possession limits and state waters quota). Additionally, the contemporary abundance of cod in state waters is low and the Division is not aware of

any significant fishery in the area noted by the regulation. The rule as currently written is also inaccurate due to referencing markers/buoys that are no longer present. A broader regulation pertaining to gillnetting in Block Island waters remains in effect.

- Timing to file: Immediately
5. **Hearing item 2c. - proposal to clarify fyke net registration requirements (section 6.5.4(A)):**
- Background: Division proposal to clarify the rule
 - Public comments: No comments were provided.
 - RIMFC: 7 – 0 in support as proposed.
 - Marine Fisheries: Support as proposed and recommended by the RIMFC.
 - Timing to file: Immediately.
6. **Hearing item 2d. - proposal to clarify the regulation regarding seine net prohibition in coastal salt pond channels (section 6.5.5):**
- Background: Division proposal to clarify the rule.
 - Public comments: No comments were provided.
 - RIMFC: 7 – 0 in support as proposed.
 - Marine Fisheries: Support as proposed and recommended by the RIMFC.
 - Timing to file: Immediately.
7. **Hearing item 3a. - proposal to clarify point of quantity determination (section 7.1.2):**
- Background: Division proposal to clarify the rule.
 - Public comments: No comments were provided.
 - RIMFC: 7 – 0 in support as proposed.
 - Marine Fisheries: Support as proposed and recommended by the RIMFC.
 - Timing to file: Immediately.
8. **Hearing item 3b. – proposal to adopt new regulations to specify information required for the dealer’s record of any sales/transactions (section 7.1.4):**
- Background: Division proposal to add requirements to assure landings are attributed to the fisherman and to aid in enforcement.
 - Public comments: Concern/opposition to the signature requirement at the time of landing as fish are routinely landed when dealer premises is closed for business.
 - RIMFC: 7 - 0 in support as proposed, with the exception of the signature requirement, as such requirement would be overly disruptive and burdensome to the fisherman without an obvious benefit.
 - Marine Fisheries: The Division defers to DEM Legal Counsel and Law Enforcement to advise on this matter.
 - Timing to file: Immediately.
9. **Hearing item 3c. – proposal to adopt regulations to specify additional (i.e., in addition to the requirements as specified in section 7.1.4) information required for dealer’s record of shellfish sales/transactions. (section 7.2.4):**

- Background: This rule currently resides in the Division of Law Enforcement regulations “Rules and Regulations Governing the taking, possession, holding, bartering and trading of shellfish”, which are slated for repeal due to duplication with Marine Fisheries regulations “Part 7 – Dealers”. However this particular provision is not currently contained in the Dealer regulations.
- Public comments: No comments were provided.
- RIMFC: 7 – 0 in support as proposed.
- Marine Fisheries: Support as proposed and supported by the Division of Law Enforcement, Legal Counsel, and the RIMFC. The regulation is very important as it pertains to shellfish and is consistent with the NSSP model ordinance regarding handling of shellfish.
- Timing to file: Immediately.

10. **Hearing item 3d. – proposal to remove the requirement that transactions be recorded in a “permanently bound ledger”. (section 7.2.4(J)):**

- Background: Division proposal to remove rule as obsolete.
- Public comments: No comments were provided.
- RIMFC: 7 – 0 in support as proposed.
- Marine Fisheries: Support as proposed and supported by the Division of Law Enforcement, Legal Counsel, and the RIMFC.
- Timing to file: Immediately.

11. **Hearing item 3e. - proposal to provide for consistency with DOH regulations “Rules and Regulations Pertaining to the Processing and Distribution of Shellfish” and the NSSP model ordinance regarding dealer wet storage of shellfish:**

- Background: Division proposal to provide consistency of rule with DOH regulations and the NSSP Model ordinance.
- Public comments: No comments were provided.
- RIMFC: 7 – 0 in support as proposed.
- Marine Fisheries: Support as proposed and recommended by the RIMFC. A meeting was held with DEM Legal Counsel and Law Enforcement, Dept. of Health, and Office of Regulatory Reform. The proposal is a result of the conclusions derived from this meeting.
- Timing to file: Immediately.

12. **Hearing item 3f. - proposal to provide for consistency with DOH regulations “Rules and Regulations Pertaining to the Processing and Distribution of Shellfish” and NSSP model ordinance regarding dealer handling and tagging of shellfish:**

- Background: Division proposal to provide consistency of rule with DOH regulations and the NSSP Model ordinance.
- Public comments: No comments were provided.
- RIMFC: 7 – 0 in support as proposed.
- Marine Fisheries: Support as proposed and recommended by the RIMFC. A meeting was held with DEM Legal Counsel and Law Enforcement, Dept. of Health, and Office of

Regulatory Reform. The proposal is a result of the conclusions derived from this meeting.

- Timing to file: Immediately.

13. **Hearing item 3g. - proposal is to revise the rule regarding sale of seafood to consumers, either directly or through restaurants or other retail outlets, so that the rule applies more broadly to all seafood, rather than shellfish only:**

- Background: Division proposal to clarify the rule.
- Public comments: No comments were provided.
- RIMFC: 7 – 0 in support as proposed.
- Marine Fisheries: Support as proposed and recommended by the RIMFC.
- Timing to file: Immediately.



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

MEMORANDUM

TO: Janet Coit, Director

FROM: Jason McNamee, Chief

DATE: August 4, 2017

SUBJECT: Amendment to black sea bass recreational season and possession limit that was the subject of a public hearing conducted on June 12th and RI Marine Fisheries Council (RIMFC) meeting on June 26th.

At a public hearing conducted by the Division in June, the recreational possession limit for black sea bass was proposed by the Division to be reduced from 7 fish to 5 fish from Nov. 1 through Dec. 31 so as to be compliant with the ASMFC Fisheries Management Plan (FMP) for black sea bass. This amendment was approved by you in your memo dated July 27, 2017. Please be advised that this FMP was recently revised to remove the requirement for a 5 fish limit for this period of time (see: ASMFC summer meeting 2017 proceedings at www.asmfc.org when posted). As such, there is no need to amend the regulations as intended (scheduled for filing on August 9th), and there is no further action required on this matter.

This memo serves to make you aware of this matter and serve as an addendum to your decision memo dated July 27, 2017.

Thank you