

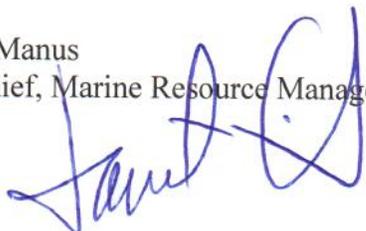


RHODE ISLAND
DEPARTMENT OF ENVIRONMENTAL MANAGEMENT

OFFICE OF THE DIRECTOR

235 Promenade Street, Room 425
Providence, Rhode Island 02908

To: Conor McManus
Deputy Chief, Marine Resource Management

From: Janet Coit
Director 

Date: December 15, 2020

Re: Final Decisions Pertaining to November 9, 2020 Marine Fisheries Public Hearing Items

I have received and reviewed your memo to me, dated December 8, 2020, and attached herewith, regarding the regulatory matters that were subject to a public hearing on November 9, 2020. I have also received and reviewed all relevant supporting documentation, including the public comments and video recording of the December 7, 2020 meeting of the RI Marine Fisheries Council (Council).

I hereby approve all the recommendations, as set forth in your memo, which are consistent with those provided by the Council. The specific regulatory items, and the final decisions for each, are as follows:

1. Commercial Black Sea Bass

A. Winter I Starting Possession Limit (Part 3, section 3.7.2(B))

- Decision: Amend the rule as noticed and recommended by the Council, which increases the starting possession limit from 500 pounds/vessel/week to 750 pounds/vessel/week for the winter I sub-period (January 1 – April 30)

B. Post-Winter I Sub-Periods (Part 3, section 3.7.2(B))

- Decision: Amend the rules as noticed and refined and recommended by the Council, which:
 - Increase the starting possession limits from 50 pounds/vessel/day to 100 pounds/vessel/day for the May 1 – June 30 sub-period.

- Eliminate the August 1 – September 14 sub-period closure.
- Establish a new July 1 – August 15 sub-period, with a new 20% allocation and a new 100 pounds/vessel/day starting possession limit.
- Establish a new August 16 – September 14 sub-period, with a new 10% allocation, and a new 50 pounds/vessel/day starting possession limit.
- Decrease the September 15 – October 31 sub-period allocation from 19.5% to 10%.
- Decrease the November 1 – December 31 sub-period allocation from 11% to 10%.

2. Recreational Striped Bass – Circle Hooks (Part 3, section 3.9.1(F))

- Decision: Adopt the new rule as noticed and recommended by the Council, which requires the use of circle hooks when fishing recreationally with bait for striped bass.

3. Commercial Summer Flounder – Aggregate Landing Program -- Starting Possession Limit (Part 3, section 3.10.2(B)(1)(c)(3))

- Decision: Maintain status quo with regard to the starting possession limit for the aggregate (winter I) program, i.e., 2,000 pounds/vessel/bi-weekly.

4. Commercial Summer Flounder – Aggregate Landing Program -- Eligibility (Part 3, section 3.10.2(C)(4)(c)(d))

- Decision: 1) Amend the rule as noticed and recommended by the Council, which requires that applicant vessel operators must not have been assessed a criminal or administrative penalty for any violation of a state or federal commercial fishing law or regulation within the past three years – in lieu of the current two-part standard that vessel operators must not have been assessed a criminal or administrative penalty for a violation pertaining to the summer flounder aggregate landing program within the past three years, and must not have been assessed more than one marine fisheries violation at any time in the past; and 2) adopt the new rule as noticed and recommended by the Council which requires applicant vessel operators to be compliant with commercial fishing data reporting requirements.

5. Commercial Summer Flounder – Aggregate Landing Program -- Penalties for Noncompliance (Part 3, section 3.10.2(C)(6)(b))

- Decision: Adopt the new rule as noticed and recommended by the Council which authorizes the Director to revoke the authorization of a vessel operator to participate in the program if the participant is assessed a criminal or administrative penalty for any violation of state or federal commercial fishing law or regulation

6. Commercial Summer Flounder – Aggregate Landing Program -- Permit Conditions (Part 3, section 3.10.2(C)(5))

- Decision: Adopt the new rules as noticed and recommended by the Council which 1) require program participants to maintain compliance with commercial data reporting requirements; 2) hold that program permits are non-transferable and that only vessels/operators authorized by the Director may participate in the program; and 3) hold that permits are valid only for the calendar year issued.

7. Horseshoe Crabs – Biomedical Harvest – Handling Requirements (Part 5, section 5.10(C)(2)(c)(3))

- Decision: Adopt the new rule as noticed and recommended by the Council which requires that horseshoe crabs must be transported to and from a biomedical facility in a temperature-controlled vehicle at or below 70 degrees F, and that containers must be secured and no more than 2/3 full.

8. Horseshoe Crabs – Biomedical Harvest – Allowable Harvest (Part 5, section 5.10(D)(3)(a))

- Decision: Adopt the new rule as noticed and recommended by the Council which establishes a new annual quota, established after consultation with permitted biomedical facilities, that may not exceed the total allowable harvest as determined by the Division based on current stock status.

9. Research Pilot Aggregate Program – Eligibility (Part 12, section 12.8(I))

- Decision: Adopt the new rule as noticed and recommended by the Council which requires applicants to be compliant with commercial fishing data reporting requirements.

10. Cooperative Multi-State Possession and Landing Pilot Program for Summer Flounder -- Term of Program (Part 13, section 13.11)

- Decision: Adopt the new rule as noticed and recommended by the Council which deletes the one-year (2020) sunset clause, thereby continuing the program indefinitely.

11. Cooperative Multi-State Possession and Landing Pilot Program for Summer Flounder -- Permit Conditions (Part 13, section 3.10(K)(L))

- Decision: Adopt the new rules as noticed and recommended by the Council which 1) require program participants to maintain compliance with commercial data reporting requirements; and 2) hold that program permits are non-transferable and that only vessels/operators authorized by the Director may participate in the program.

12. Cooperative Multi-State Possession and Landing Pilot Program for Summer Flounder – Addition of Black Sea Bass (Part 13)

- Decision: Adopt the new rule, as recommended by the public and the Council, which adds black sea bass as an eligible species under the program.

13. Summer Flounder Exemption Certificate Program – Application for Transfer (Part 14, section 14.12(A))

- Decision: Adopt the new rule as noticed and recommended by the Council which requires an application for the transfer of an Exemption Certificate.

14. Summer Flounder Exemption Certificate Program – Automatic Transfer of Certificate Upon Transfer/Sale of Vessel (Part 14, section 14.12(A)):

- Decision: Maintain status quo, i.e., retain provision pertaining to disposition of exemption certificate upon change in ownership.

15. Summer Flounder Exemption Certificate Program – Time Period to Apply the Exemption Certificate to a Replacement Vessel upon Transfer/Sale (Part 14, section 14.12(A)(1)&(A)(2)(d)):

- Decision: Adopt the new rule as noticed and recommended by the Council which extends the time period for applying an exemption certificate to a replacement vessel owned by the seller/transferor from ninety days following sale/transfer of vessel to five years following approval of application for transfer.

16. Summer Flounder Exemption Certificate Program – Splitting Certificate from Federal Permit (Part 14, section 14.12(A)(3)(b))

- Decision: As noticed and recommended by the Council, repeal the provision requiring that an exemption certificate must remain attached to the federal permit on the vessel when it was originally issued and cannot be split from the federal permit.



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

INTER-OFFICE MEMO

TO: Janet Coit, Director

FROM: Conor McManus, Deputy Chief

DATE: December 8, 2020

SUBJECT: Decisions regarding proposed amendments to regulations that were the subject of a public hearing held on November 9th and RI Marine Fisheries Council (RIMFC) on December 7th. The public hearing folder contains all the necessary documentation related to this hearing, including a summary of the oral comments made at the hearing, written comments received, the noticed annotated regulations, and public notice.

1. 2021 Commercial Black Sea Bass Management (Part 3, section 3.7.2(B)):

- Background: Annual review of management. The 2021 RI commercial quota is expected to remain close to 2020.
- Proposal: Three industry proposals submitted and noticed.
 - Industry proposal #1: Increase Winter I starting possession limit from 500 to 750 lbs
 - Industry proposal #2: Increase summer and fall starting possession limits from 50 to 100 lbs
 - Industry proposal #3: Adjust summer and fall seasons and allocations and eliminate the summer closure
- Public comments:
 - K. Almeida/Town Dock: Support to raise starting possession limit in Winter I from 500 to 750 lbs/week to avoid a potential glut of quota at end of sub-period and tanking of price. Could always scale back mid-season as needed. Does not support industry proposal that increases the summer period possession limit, as could result in an early closure due to increased participation during that period. Supports increase from 50 to 100 lbs/day for all other sub-periods. Does not support removing the summer closure period; do not believe there is enough fish to make it through the summer without avoiding a closure.

- K. Murgio: Supports eliminating summer closure and proposed changes to sub-period allocation %'s as noticed (his proposal).
- RIMFC:
 - 7 - 0 in support of recommending an increase in the starting possession limit in the Winter I sub-period from 500 to 750 lbs/vessel/day.
 - 7-0 to recommend adoption of industry proposal 3 with a starting possession limit of 100 lbs/vsl/day for the 5/1-6/30 and 7/1-8/15 sub-periods.
- Marine Fisheries: The Division can manage any of the options noticed and supports the recommendation of the Council.
- Timing to file: Immediately.

2. **Recreational Striped Bass – proposed adoption of a circle hook requirement (Part 3, section 3.9.1(F))**

- Background: ASMFC adopted Addendum VI in October 2019 mandating that all states require the use of circle hooks when fishing recreationally with bait for striped bass effective 1/1/21.
- Public comments: None provided.
- RIMFC: 8 – 0 in support of amending as noticed.
- Marine Fisheries: Support as noticed and recommended by the Council.
- Timing to file: Immediately.

3. **2021 Commercial Summer Flounder Management (Part 3, section 3.10.2(B)(1)(c)(3))**

- Background: Annual review of management. The 2021 RI commercial quota is expected to remain the same as 2020.
- Proposal: Industry proposal to modify the starting possession limit for the Aggregate Landing Program.
- Public comments:
 - Brian Loftes: Opposes a weekly limit for Summer Flounder Aggregate Permit Program. Supports maintaining a biweekly limit.
 - Brent Loftes: Opposes a weekly limit for Summer Flounder Aggregate Permit Program. Supports maintaining a biweekly limit.
 - K. Almeida/Town Dock: Support to increase the Winter Aggregate program to 4,000 lbs/vessel/bi-weekly. If it seems as though the industry is going through the quota too fast DEM can always decrease the landings limit down to 2,000 pounds. Avoiding dropping below 2,000 pounds is important as it is hard to make a trip for 1,000 pounds at this time of year profitable.
- RIMFC: 7 - 0 in support of recommending to maintain status quo.
- Marine Fisheries: Support to maintain status quo as recommended by the Council.
- Timing to file: Immediately.

4. Summer Flounder Aggregate Landing Program (Winter I) Permit - Eligibility Requirements (Part 3, section 3.10.2(C)(4)):

- Background: Division proposal initiated by DEM Legal to amend the permit eligibility requirements to include violations of federal commercial fishing regulations or laws within the past three (3) years, consistent with other permit programs administered by the Division.
- Public comments: None provided.
- RIMFC: 8 – 0 in support of amending as noticed.
- Marine Fisheries: Support as noticed and recommended by the Council.
- Timing to file: Immediately.

5. Summer Flounder Aggregate Landing Program Permit (Winter I) - Penalties for Non-Compliance (Part 3, section 3.10.2(C)(6)(b)):

- Background: Division proposal to provide for consistency across permit programs.
- Public comments: None provided.
- RIMFC: 8 – 0 in support of amending as noticed.
- Marine Fisheries: Support as noticed and recommended by the Council.
- Timing to file: Immediately.

6. Summer Flounder Aggregate Landing Program Permit (Winter I) - Permit Conditions (Part 3, section 3.10.2(C)(5)):

- Background: Division proposal to provide for consistency across permit programs.
- Public comments: None provided.
- RIMFC: 8 – 0 in support of amending as noticed.
- Marine Fisheries: Support as noticed and recommended by the Council.
- Timing to file: Immediately.

7. Bio-medical Horseshoe Crab Handling BMPs (Part 5, section 5.10(C)(2)(c)(3)):

- Background: Division proposal to include in rule best management practices (BMPs) for bio-medical harvest handling as defined by ASMFC.
- Public comments: None provided.
- RIMFC: 8 – 0 in support of amending as noticed.
- Marine Fisheries: Support as noticed and recommended by the Council.
- Timing to file: Immediately.

8. Bio-medical Horseshoe Crab Allowable Harvest (Part 5, section 5.10(D)(3)(a)):

- Background: Division proposal to establish bio-medical allowable harvest for horseshoe crab based on needs of the biomedical facilities.
- Public comments: None provided.
- RIMFC: 8 – 0 in support of amending as noticed.
- Marine Fisheries: Support as noticed and recommended by the Council.
- Timing to file: Immediately.

9. Research Pilot Aggregate Program - Eligibility Requirements (Part 12, section 12.8(I)):

- Background: Division proposal to provide for consistency across permit programs.
- Public comments: None provided.
- RIMFC: 8 – 0 in support of amending as noticed.
- Marine Fisheries: Support as noticed and recommended by the Council.
- Timing to file: Immediately.

10. Cooperative Multi-State Possession and Landing Pilot Program for Summer Flounder - Term of Program (Part 13, section 13.11):

- Background: Division proposal to delete the term of the program provision so as to continue the program indefinitely.
- Public comments: None provided.
- RIMFC: 8 – 0 in support of amending as noticed.
- Marine Fisheries: Support as noticed and recommended by the Council.
- Timing to file: Immediately

11. Cooperative Multi-State Possession and Landing Pilot Program for Summer Flounder – Permit Conditions (Part 13, section 13.10(K)(L)):

- Background: Division proposal to provide for consistency across permit programs.
- Public comments: None provided.
- RIMFC: 8 – 0 in support of amending as noticed.
- Marine Fisheries: Support as noticed and recommended by the Council.
- Timing to file: Immediately

12. Cooperative Multi-State Possession and Landing Pilot Program for Summer Flounder – Inclusion of Black Sea Bass (Part 13):

- Background: The inclusion of black sea bass into the program was raised during the public comment period (not noticed).
- Public comments:
 - D. Borden: Supports inclusion of black sea bass and scup, as all three species are generally captured during the summer period. With only

summer flounder there is incentive which encourages vessels to discard some species in order to meet the summer flounder landing requirements of the sister state. That could be avoided if you broadened the species in the program. The Division should retain the authority to determine which species are included in the program.

- K. Almeida/Town Dock: Supports Rhode Island participation with Massachusetts in a multi-state landings agreement for black sea bass.
- RIMFC: 7 – 0 in support of adding black sea bass in support of public comment.
- Marine Fisheries: Support to include black seas bass, but not scup, into the program as supported by public comment and as recommended by the Council. It is noted that Mass DMF has also included black sea bass into their program. The Division will continue to reach out to the states of Connecticut and New York regarding changes to their programs.
- Timing to file: Immediately.

13. Summer Flounder Exemption Certificate Program – Application for Transfer (Part 14, section 14.12(A)):

- Background: Division proposal to require an application for a Summer Flounder Exemption Certificate transfer as a means to more efficiently administer the program and track all vessels holding a certificate.
- Public comments: None provided.
- RIMFC: 7 – 0 in support of amending as noticed.
- Marine Fisheries: Support as noticed and recommended by the Council.
- Timing to file: Immediately.

14. Summer Flounder Exemption Certificate Program – Automatic Transfer of Certificate Upon Transfer/Sale of Vessel (Part 14, section 14.12(A)):

- Background: Industry proposal to remove language that stipulates that an Exemption Certificate automatically stays with vessel upon sale/transfer of vessel.
- Public comments:
 - K. Almeida/Town Dock: Supports as proposed (remove automatic transfer) as this will allow the fisherman to retain their RI exemption permit and keep RI fluke in RI.
- RIMFC: 7 – 0 in support of maintaining the current language and to not adopt the rule as noticed.
- Marine Fisheries: Support to maintain status quo as recommended by the Council and to not adopt the proposed language, as the matter becomes moot with the addition of the transfer application requirement.
- Timing to file: Immediately.

15. Summer Flounder Exemption Certificate Program – Time Period to Apply the Exemption Certificate to a Replacement Vessel upon Transfer/Sale (Part 14, section 14.12(A)(1)&(A)(2)(d)):

- Background: Industry proposal to extend time period for a vessel owner to apply the Exemption Certificate to a replacement vessel upon sale/transfer.
- Public comments:
 - K. Almeida/Town Dock: Support as proposed. It can take years to find the right size/tonnage vessel to match the federal permit.
- RIMFC: 7 – 0 in support of amending as noticed.
- Marine Fisheries: Support as noticed and recommended by the Council.
- Timing to file: Immediately.

16. Summer Flounder Exemption Certificate Program – Splitting Certificate from Federal Permit (Part 14, section 14.12(A)(3)(b)):

- Background: Industry Proposal to remove requirement that an Exemption Certificate must remain attached to the federal permit on the vessel when it was initially issued and cannot be split from the federal permit.
- Public comments:
 - K. Almeida/Town Dock: Support as proposed. This would benefit the fishermen and the state of Rhode Island, by allowing the fishermen to keep the RI permit to put on their new vessel and keep Rhode Island quota on Rhode Island vessels. This will allow the fishermen to retain the RI fluke permit history.
- RIMFC: 7 – 0 in support of amending as noticed.
- Marine Fisheries: Support as noticed and recommended by the Council.
- Timing to file: Immediately.

17. Summer Flounder Exemption Certificate Program – Baseline Specifications (Part 14, section 14.12(A)(2)):

- Background: This was provided as a public comment. No amendments were proposed to this section.
- Public comments:
 - K. Almeida/Town Dock: Supports removal of any vessel baseline requirements. With the quotas that we have on the species the state manages, it seems that baselines are an unnecessary restriction.
- RIMFC: N/A (was not addressed as was not noticed).
- Marine Fisheries: Due to the complexity of the matter and issues raised members of by the fishing industry at the workshop held on October 15, it was determined by the Division that of the matter required further discussion and amendments were therefore not noticed with other changes to the program at this time. This is consistent with the Division’s phased approach to adopting amendments to this rule.
- Timing to file: N/A.