



Rhode Island
Department of Environmental Management

DIVISION OF FISH AND WILDLIFE

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TO: W. Michael Sullivan, Acting Director DEM

FROM: Mark Gibson, Deputy Chief for Marine Fisheries DFW

DATE: May 25, 2005

SUBJECT: Request for Decision on May 19, 2005 Marine Fisheries Hearing Items

Comments and recommendations on the proposals presented at the May 19, 2005 DEM public hearing are summarized in this memorandum. The RIMFC considered these issues at their May 19th meeting and have provided advice in accordance with RIGL 20-2.1-10. Supporting documentation submitted along with this memorandum include the public hearing summary document, the May 19th RIMFC meeting minutes including suggested language received from the RILA attorney, summary of public hearing comments, a copy of the public hearing slideshow, and pertinent advisory panel minutes. There were no written comments submitted. The regulation filing process will be initiated upon receipt of your determinations regarding these proposals.

- 1) *Add a dockside sale section and a dockside sale policy to the RI marine fisheries regulations titled "Rules and Regulations Governing the Management of Marine Fisheries".* The new policy/regulation was brought forward by the Department of Environmental Management (DEM) in response to concerns from industry members that the sale of product at the dock was an ongoing practice but was not codified in regulation. The policy/regulation is an effort by the DEM to legalize the current practice. There were two public comments made at the hearing, one by the RI Lobstermen's Association (RILA) legal counsel and one from the president of RILA, both in support of moving forward with the lobster portion of the dockside sale regulation. The Council unanimously agreed to recommend approving the lobster portion of the dockside sale regulation with the addition of an item 1a which will state that a licensed individual or a regularly employed crew member of the licensee can get the dockside sale endorsement. This new section should also stipulate that the regularly employed crew member must be documented in writing on board the vessel and that they be furnished with all of the applicable rules that apply to the endorsement. A letter from RILA attorney Mark McSally, which includes some suggested language for the lobster section, is attached to the May 19, 2005 RIMFC minutes per the request of the Council. The

Council recommended indefinitely tabling the finfish portion of the dockside sale policy/regulation. Council was concerned that live fish sales would not be reported since there is no finfish analog to the DFW lobster logbook. They also expressed concern that regulated species would be mislabeled as bait thereby circumventing the live sale only restriction. Finally, the Council recommended approving the \$25.00 application fee and shellfish portions of the dockside sale policy/regulation that prohibits shellfish sale anyone but licensed dealers. The Division concurs with the Council recommendations and rational. The lobster provision would codify a long standing and value added strategy of industry and our logbook reporting system will capture landings. We also support the Council request to provide flexibility to the businesses so that specified employees can conduct the sales provided that DEM legal council does not find conflict with transfer of license prohibitions in current statute. We point out that it may be difficult for the licensing Division to accommodate this regulation in 2005 since the licensing window has closed and licenses have been issued. There may be an opportunity to develop regulation for finfish/bait sales in the future if reporting and enforcement issues can be worked out.

- 2) *Add an Atlantic herring section to the marine fishing regulations.* This proposal was brought forward to allow the Division of Fish and Wildlife to close the Atlantic herring fishery when the National Marine Fisheries Service or Atlantic States Marine Fisheries Commission estimates that the herring quotas have been completely harvested. In the past, closure orders have been issued but no regulatory mechanism existed for the state to comply. There were no public comments made about this item. The Council unanimously recommended adopting this new section to the marine fisheries regulations and approves using the language as presented with the removal of the minimum size section (second version on the slide presentation). The Division recommends adoption of version two as written and endorsed by Council. We have risked non-compliance actions by ASMFC in the past. Although the closure orders have generally been for areas in the Gulf of Maine (area 1) where few Rhode Island vessels fish, closure orders for area 2 off our coast are possible and we need a mechanism to comply.

Cc: Stephen Hall- DEM Law Enforcement
Mike Lapisky- RIDFW
Najih Lazar- RIDFW
Jason McNamee- RIDFW

To: Mark Gibson
Deputy Chief for Marine Fisheries
Division of Fish and Wildlife

From: W. Michael Sullivan
Acting Director, DEM

Date: June 7, 2005

Re: Decision on May 19, 2005
Marine Fisheries Hearing Items

I am writing in response to your May 25, 2005 memorandum, in which you set forth your recommendations regarding two regulatory proposals: the establishment of a new dockside sale endorsement as a component of the commercial fishing licensing program; and the establishment of a new regulatory framework for the management of Atlantic herring.

I have also reviewed the additional supporting documentation you provided, namely -- pertinent panel advisory minutes, the public hearing summary document, a copy of the public hearing slide show, the summary of public hearing comments, and the May 19th Rhode Island Marine Fisheries Council meeting minutes.

Dockside Sales

I support the recommendation offered by you and the Council to move forward with the portion of the proposed regulations addressing lobster sales, while tabling, at least for the time being, the portion of the proposed regulations addressing finfish sales. In support of this position, I note that the existing logbook reporting program for the commercial lobster fishery will capture all landings, including product sold directly to consumers. I further note that the endorsement proposal would codify a long-standing practice undertaken by industry, and is strongly supported by the RI Lobstermen's Association. And I note that the proposed regulation emanated from a policy proposal that was jointly developed by DEM and the Department of Health.

Additionally, I support the recommendation offered by you and the Council to add a provision to the regulation that allows a regularly employed crew member to conduct the sales on behalf of the licensed captain. In response to your concern about potential license issuance and transfer issues, I would advise that the dockside sale endorsement only be made available to (lobster or multi-purpose) license holders; and through that new provision, allow the license holders to authorize a regularly employed crew member to conduct the sales, per the written documentation/affidavit that would be kept on board the vessel.

I note that the proposed regulations state that the dockside sale endorsement shall be available any time during the year, and shall not be subject to the February 28th license

application deadline. Accordingly, I am forwarding a copy of this memo to Margaret McGrath in DEM's Office of Boating Registration and Licensing, to ensure that we will be ready to begin issuing the new endorsement when the new regulation takes effect, i.e. 20 days after filing with the Secretary of State.

The decision to table the finfish portion of the regulations is based on three factors: 1) the concern that live finfish sales may not be adequately reported, since there is no finfish analog to the lobster logbook program; 2) the concern that prohibited species -- i.e., all dead fish targeted for human consumption -- could be mislabeled and sold as bait, thereby circumventing the live-sale-only restriction; and 3) the apparent federal prohibition on the sale of finfish by federally licensed fishermen to anyone other than federally licensed seafood dealers. I do not believe that the reporting and enforcement issues are insurmountable, and so I would be more than willing to entertain any future proposals that clarify and tighten up the finfish sales provisions. I also recognize that there may be some non-federally licensed fishermen who may not be subject to the federal restrictions, which further suggests that the issue may be appropriate for reconsideration in the future.

Atlantic Herring

I recognize that the State has not had a regulatory mechanism to comply with prior closure orders for the Atlantic herring fishery issued by the National marine Fisheries Service or the Atlantic States Marine Fisheries Commission. Although such orders have generally been for areas in the Gulf of Maine, where few RI vessels fish, I recognize that closure orders for the waters of Southern New England are possible in the future, giving rise to the need for a regulatory framework in our regulations to comply with any such mandate. Accordingly, I support the recommendation offered by you and the Council to adopt the new regulatory section pertaining to Atlantic herring, absent the minimum size section.