



Rhode Island  
Department of Environmental Management

**DIVISION OF FISH AND WILDLIFE**

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TO: W. Michael Sullivan, Director DEM  
FROM: Robert Ballou, Acting Chief, DFW  
DATE: November 30, 2009  
SUBJECT: Request for Decision on October 21, 2009 Marine Fisheries Hearing Items

Proposed regulatory changes pertaining to (1) commercial licensing and (2) winter flounder have moved through the regulatory review process and are hereby presented for final decision.

The matters were the subject of a public hearing held on October 21, 2009, and subsequent consideration by the RI Marine Fisheries Council at their November 2, 2009 meeting. Supporting documentation submitted along with this memorandum include the minutes of the RIMFC Industry Advisory Committee meeting and the RIMFC Winter Flounder AP meeting, the public hearing summary document, a summary of public hearing comments, and the applicable portion of the minutes from the RIMFC November 2, 2009 meeting.

The proposed changes are summarized below, and detailed in the attached annotated regulatory document.

***Having reviewed the entire record, and conferred with staff, I hereby urge adoption of all of the proposed changes. 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.***

Proposed changes to shellfish, finfish, and crustacean sector management plans:

These management plans are required to be updated annually, per RIGL 20-2.1-9(5), in association with modifications to the licensing regulations. There are no significant changes being proposed in the plans this year; rather, the modifications are in the form of updates to our existing management programs, which are consistent with the associated proposed changes to the licensing regulations. As you know, we have a long-term goal of further developing these plans into more comprehensive documents; but it will take some time to do that and, for now, there are no significant changes being proposed.

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With regard to the *Shellfish Sector Management Plan*, the status quo finding, as reflected by the plan, is that a relatively stable bay quahog stock allows for the continuing issuance of new quahog licenses/endorsements at a 3:1 exit/entry ratio, which would essentially maintain effort at current levels. For soft-shell clams, the management plan notes that prior findings of a decreasing trend in CPUE warrant continued attention, but until we are able to launch a stock assessment initiative for the resource, we have little to go on in the way of science-based recommendations pertaining to licensing. While landings data for 2009 are still being analyzed, landings for this fishery have fluctuated over the last three years, with increased landings from 2006 to 2007 and decreased landings in 2008. While a precautionary approach would suggest that no new soft-shell clam endorsements be issued until the resource is properly assessed, a modest increase in the number of new endorsements made available for 2010, as recommended by the Council, is considered acceptable.

With regard to the *Finfish Sector Management Plan*, the quotas allocated to RI in 2010 for some of the restricted finfish/quota species (e.g., summer flounder) are expected to increase, while the quotas for other such species (e.g., scup, black sea bass, and bluefish) are likely to be about the same, or perhaps slightly less than in 2009. As we have long maintained, the plan continues to hold that if active licenses retired from the fishery in 2009, allowing for the issuance of a small number of new licenses, pursuant to a 5:1 exit/entry ratio, is warranted, since introducing a small number of restricted endorsements in such a conservative manner is not likely to have any meaningful impact on effort in a given year.

With regard to the *Crustacean Sector Management Plan*, the status quo nature of the trap allocation program, coupled with continuing indications of relatively low resource abundance, strongly support status quo with regard to licensing, i.e., no new lobster licenses/endorsements. However, per your decision to move forward with the trap allocation transfer program, and the associated licensing provisions, anyone who wishes to enter the commercial lobster fishery and is able to acquire trap allocation via a transfer, will have an open opportunity to make that happen. In essence, that will open up access to the fishery to any RI resident, based solely on their ability to acquire an allocation of traps.

There were no specific comments provided at the public hearing on any of the sector management plans for finfish, shellfish, and crustacean. The Council did not make any specific recommendations regarding the adoption of the management plans. By default, I recommend adoption of the updated plans, as proposed.

Proposed amendments to the commercial fishing licensing regulations:

With regard to *shellfish*, the status quo regulation, for *quahogs*, allows for one new license/endorsement to be issued for every three Principal Effort Licenses (PELs) with quahog endorsements that retire. Under that scenario, nine (9) new Commercial Fishing Licenses (CFLs) with quahog endorsements would be made available for 2010. The IAC recommended expanding the provision to include all eligible licenses that retire – i.e., all Multipurpose License (MPL) holders, as well as all PELs with quahog. Under that scenario, sixteen (16) new CFLs with quahog would be made available for 2010. Inexplicably, the Council voted to recommend staying with the status quo approach. As reflected by the meeting minutes, the Council offered little in the way of rationale for their recommendation, so it is difficult to assess their position. In support of my recommendation, I offer the following: I urge adoption of the IAC-recommended option:

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- the number of new licenses/endorsements being considered is relatively low;
- the quahog fishery is continuing to trend downward both in terms of landings and levels of effort;
- there are no indications that the resource is unable to withstand a modest increase in effort
- the industry's concerns over market prices are unlikely to be affected by the issuance of 16 new licenses/endorsements, rather than 9;
- those who spoke at the public hearing spoke unanimously in favor of the IAC-recommended option;
- there is no meaningful difference between the retirement of a licensee who holds a PEL with quahog and the retirement of a licensee who holds a MPL;
- the number of *active* license holders in the quahog fishery who retired in 2009 is nine (9); and
- to allow for a modest increase in effort, the number of new licenses/endorsements needs to be greater than the number of active licensees in the fishery who retire.

***Based on the above, I urge adoption of a 3:1 exit/entry ratio, applied to all eligible licenses (MPLs, and PELs with a quahog endorsement) that retired from the fishery in 2009. This is a slight change from status quo, and would result in the availability of sixteen (16) new licenses/endorsements for 2010.***

With regard to *soft-shell clams*, the Council supported the IAC recommendation to apply a 5:1 exit/entry ratio to all eligible licenses (MPLs, PELs with soft-shell clam endorsements, and CFLs with soft-shell clam endorsements) that retired in 2009. There was support for that approach expressed at the public hearing. A total of 84 such licensees retired in 2009. Few of those retirees had been active in the fishery. Given how weak our database is with regard to this fishery, we really don't have a sufficient basis to gauge appropriate effort levels with precision. What's more, there is considerable latency in the fishery, with just 211 (14%) of all eligible license holders showing any activity (as of 2008).

***As such, I urge adoption of the new 5:1 exit/entry ratio, applied to all eligible licenses (MPLs, PELs with SSC endorsements, and CFLs with SSC endorsements) that retired from the fishery in 2009. This is a change from status quo (no new SSC endorsements were made available in 2009), and would result in the availability of seventeen (17) new license/endorsements for 2010.***

With regard to *restricted finfish*, the Council voted to recommend status quo (also recommended by the IAC and supported at the public hearing) – i.e., continuing to apply a 5:1 exit/entry ratio to active, eligible licenses (MPLs + PELs w/restricted finfish endorsements) that retired in 2009. There were 11 such licenses that retired in 2009. That would result in the availability of 2 new licenses/endorsements for 2010. However, since there are three priority categories that exist in regulation, the proposal that went out to public notice clarified that there should be a minimum of three new licenses/endorsements made available so that each priority category gets equal access to one new endorsement. That clarification was supported by the Council, and the IAC, and at hearing.

***Accordingly, I urge no change to the restricted finfish provisions, other than providing that in cases where the application of the 5:1 ratio results in two (2) new licenses/endorsements, the actual number will be rounded up to three (3). Based on the number of applicable licensees who retired in 2009, three (3) new licenses/endorsements would be made available for 2010.***

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With regard to **lobsters**, there was no option considered other than status quo; there was no comment on the issue made at public hearing; and the Council offered no recommendation. Given the nature of the trap allocation program, and the pending promulgation of the trap allocation transfer provisions, which include an associated licensing element (namely, anyone obtaining trap allocation via transfer will be automatically qualified to obtain a license), it stands to reason no other licensing-related changes are warranted at this time.

Proposed amendments to the winter flounder management plan: The proposed changes to the winter flounder management plan are required by the ASMFC to comply with the ASMFC Fishery Management Plan for Winter Flounder. For the recreational fishery, ASMFC requires reducing the daily bag limit from 4 fish to 2 fish (per person). For the commercial fishery, the State has two options: either a 50-pound or a 38 fish daily possession limit (per vessel).

The winter flounder AP met to review the issue, but lacked a quorum, so no recommendations were made. There were no specific comments from individuals on the proposed changes at the public hearing. One individual mentioned that he understood the reasoning behind the reductions in possession limits but did not offer a preferred option. The Council recommended adoption of the proposed amendment pertaining to the recreational fishery, and further recommended adoption of the 50-pound daily possession limit for the commercial fishery.

We consulted with Law Enforcement on the issue, and determined that they have no preference with regard to the two options for the commercial fishery.

*In recognition of the extremely poor stock status for winter flounder in the southern New England region, and based on the need to maintain compliance with ASMFC Plan mandates, I urge adoption of the new 2-fish/day (per person) recreational limit and 50-pound/day (per vessel) commercial limit for the winter flounder fishery.*



Approved for filing as presented

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W. Michael Sullivan, Director

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