



Rhode Island
Department of Environmental Management

DIVISION OF FISH AND WILDLIFE

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TO: Janet L. Coit, Director DEM

FROM: Mark Gibson, Deputy Chief for Marine Fisheries, DFW

DATE: December 8, 2011

SUBJECT: Request for Decision on November 9, 2011 Marine Fisheries Hearing Items

Proposed regulatory changes pertaining to (1) commercial summer flounder quota management (2) commercial scup quota management, (3) commercial black sea bass quota management, and (4) amendments to the cod management plan to allow for a fillet law, 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 9, 2011, and subsequent consideration by the RI Marine Fisheries Council at their December 5, 2011 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 5, 2011 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.

Commercial Summer flounder quota management proposals for 2012: There were several proposals for the 2012 summer flounder quota management plan that were brought forward for public comment. The first was a proposal to end the sector pilot program; the second proposal was to increase the starting possession limits for the winter 1 sub period to 500 lbs/day or 3,500 lbs/week (from 300 lbs/day or 3,000 lbs/week); the third was a proposal to allow for electronic logbook reporting; the fourth was to remove the Friday/Saturday closure; the fifth proposal was to increase the summer aggregate amount to 700 lbs/week (from 500 lbs/week) contingent upon removing the Friday/Saturday closure; the sixth proposal was to increase the fall or winter 2 sub period possession limit to 700 lbs/day (from 600 lbs/day); the seventh proposal was to increase the non-exemption certificate holder possession limit to 500 lbs/day (from 200 lbs/day). At the public hearing comments were taken on each proposal separately.

With regard to *ending the sector pilot program*, a representative from the RI Fishermen's Alliance and a representative from the American Alliance of Fishermen and their Communities spoke in support of terminating the summer flounder sector pilot program at the public hearing. There were no other comments made. The summer flounder advisory panel (AP) did not comment on the ending of the sector pilot program as the item was presented as an informational topic. The Division noted that a pilot summer flounder sector had been authorized for three years (2009-2011). Significant evidence of economic and biological benefits has emerged in initial evaluations. At this time, the Division recommends that the pilot program be discontinued consideration be given to the existing sector to operate in 2012. A full evaluation of the three years should be conducted in conjunction with URI and a full sector program be offered unless the evaluation uncovers compelling evidence otherwise. While this timeline is challenging, no opportunity for sectors is allowed in 2012 could harm existing business plans. At the Council meeting, the Council moved to recommend that the summer flounder sector allocation pilot program be terminated.

As supported by the Council, and the Division, I recommend terminating the summer flounder sector pilot program; however I also recommend exploring means to allow the existing sector to operate in 2012 while the pilot program is evaluated and new sector programs are considered.

Increase the winter 1 sub period possession limits: Before knowing of an impending change to the 2012 coast wide summer flounder quota, the Summer Flounder Advisory Panel (AP) supported the proposal to increase the starting possession limits for the winter 1 sub period to 500 lbs/day or 3,500 lbs/week for the aggregate program. At the public hearing a representative from the RI Commercial Rod & Reel Association spoke in support of the AP recommended proposal to increase the starting possession limits for the winter 1 sub period as noted above and two comments supported remaining at 3,000 lbs but stated that the aggregate period should start sooner. The second week of January was recommended to extend the harvest period and have the winter 1 allocation last longer. No other comments were made.

The Division recommended remaining at status quo with sub-period starting possession limits. The coast wide summer flounder annual catch limit (ACL) for 2012 is anticipated to be revised downward at the December 14, 2011 joint meeting of the mid-Atlantic Fishery Management Council and the Atlantic States Marine Fisheries Commission. This could result in a reduction in the state quota over the previously anticipated level. We do not know at this time the magnitude of the reduction, so 2011 starting limits are appropriate for 2012. The Division has sufficient authority to increase or decrease allowances from the starting limits in accordance with the quota and catch rates. At the Council meeting, the Council recommended to adopt an increase in the Winter 1 sub period starting possession limits to 500 pounds per day or for an aggregate period 3,500 pounds per week.

Although the Division has recommended status quo, I can support the Council recommendation to increase the winter 1 starting possession limits since the Division has sufficient authority to modify possession limits in accordance with the soon to be revised 2012 quota and ensuing catch rates. Therefore, I urge adoption of the Council recommendation to increase in the Winter 1 sub period starting possession limits to 500

pounds per day (from 300); and the aggregate period to 3,500 pounds per week (from 3,000).

Allowance for Electronic Logbook reporting: At the public hearing two speakers commented on the e-logbook allowance, one was just to confirm that it would be voluntary and would replace the current paper logbook requirement and the other was a representative from the RI Commercial Rod and Reel Association (RIRRA) indicating they were in support of the electronic logbook allowance. The AP supported this proposal. The Division supports allowance for the electronic logbook reporting. At the Council meeting, the Council unanimously recommended adoption for the voluntary allowance of electronic logbook reporting.

As supported by the Council, and the Division, I urge adoption of the allowance for electronic logbook reporting for summer flounder. I am aware however that the Division of Law Enforcement has opposed this measure in the past believing that conventional logbooks retained on the vessel and filled in daily are needed to enforce compliance with aggregate limits.

Removal of the Friday/Saturday closure: Both the Summer Flounder Advisory Panel (AP) and the Division supported this proposal. At the public hearing the commercial sector supported removing the Friday/Saturday closures for the summer flounder fishery. The recreational sector was opposed to removing the closures however they proposed that instead of removing the closure for both days that a one day closure should be considered the first year with a recommendation to keep Saturdays closed. This proposal was partly based on the uncertainties of the summer flounder quota which may be reduced from what initially had been proposed. The Council recommended elimination of the Friday and Saturday closures.

As supported by the Council, and the Division, I urge you to remove the Friday and Saturday closures. At current quota levels, there is no need for an additional landings brake and the Division has sufficient authority to change possession limits as necessary. A 7-day fishing week provides for greater business flexibility and safety benefits for the commercial sector. Although a concern of recreational anglers, there is no evidence that 7-day commercial fishing impacts catch rates in the recreational fishery.

Increase summer aggregate amount: The Summer Flounder AP recommended increasing the summer aggregate program possession limit from 500 lbs/week to 700 pounds per week, making it equal to the daily possession limit (100 pounds/day) times seven days. This proposal was made with the caveat that 700 pound per week was contingent upon removing the Friday and Saturday closure. At the public hearing an alternate proposal was offered which was to leave the daily starting limit to the discretion of the DFW instead of creating a fixed starting possession limit. A representative from the RI Commercial Rod & Reel Association spoke in support of the proposal based on the caveat that the increase to 700 pounds per week would be contingent upon removing the Friday/Saturday closure. This group also added their own caveat indicating if the daily limit was required to be reduced, then the weekly aggregate should also be reduced accordingly. The Division agreed recommending an increase in the summer aggregate limit from 500 to 700 pounds per week. At the Council meeting, the Council recommended to adopt an increased summer aggregate starting possession limit of 700 pounds per week contingent upon also adopting removal of the Friday and Saturday closures.

As supported by the Council, and the Division, I urge adoption of the increased summer aggregate possession limit of 700 pounds per week (from 500) to complement the removal of the Friday and Saturday closures. Both measures should help the Division avoid “end loading” quota during the summer sub-period.

Increase Fall sub period possession limit: At the public hearing a representative from the RI Commercial Rod & Reel Association spoke in support of this proposal which would increase the Fall sub period possession limit to 700 pounds per day (from 600 pounds per day). There was one other individual who spoke in support of this proposal at the public hearing. No other comments were made. The AP supported this proposal. As stated earlier, the Division recommends remaining at status quo with sub-period starting possession limits since the coast wide summer flounder annual catch limit (ACL) for 2012 is anticipated to be revised downward, and this could result in a reduction in the state quota over the previously anticipated level. The Council recommended adoption of an increased Winter 2 sub period starting possession limits of 700 pounds per day.

Again, although the Division has recommended status quo, I can support the Council Recommendation to increase the winter 2 starting possession limit since the Division has sufficient authority to modify possession limits in accordance with the soon to be revised 2012 quota and ensuing catch rates. Therefore, I urge adoption of the Council recommendation to increase the Winter 2 sub period starting possession limits to 700 pounds per day (from 600).

Increase non-exemption certificate holder possession limits: This proposal was very contentious at the public hearing. There are many aspect of this program however the Division had proposed to modify only one aspect while individuals had concerns that other aspects were being modified. Both the RI Commercial Rod & Reel Association and the RI Fishermen’s Alliance spoke in opposition. There were also two written comments received on this item: (1) from the RI Fishermen’s Alliance, which submitted an alternate proposal for the summer flounder exemption certificate program, and (2) from a member of the RI Fishermen’s Alliance, in support of the Alliance proposal. The advisory panel was the body that first brought up the notion of raising the non exemption certificate holder possession limit, but it was not an agenda item and was therefore not voted on.

The Division recognized there is interest in a comprehensive examination of this program rather than making one change at a time. However, the Division noted that the summer flounder exemption permit was developed in 1995 in response to quota management, low quotas, and landings by non-resident vessels. The state quota at that time was approximately 1 million pounds but is now 2.7 million pounds. The permit program has outlived its usefulness and in particular the 200 pound limit is obsolete with respect to current quota levels. Access to quota species is now controlled by the restricted finfish licensing system. The Division therefore recommended increasing the limit to 500 pounds for 2012. This would allow the modern industry to more equitably share in the state quota. The Division also recommended a comprehensive review of the entire summer flounder exemption certificate program in 2012 with an eye towards elimination.

The Council unanimously recommended remaining at status quo (200 pounds per day) for non-holders of summer flounder exemption certificates until such time when the RIMFC Summer Flounder Advisory Panel could meet to discuss and review the entire fluke exemption certificate program.

Taking the Council concerns into account, I agree with the Council and recommend status quo (200 lbs/day) for non-holders of summer flounder exemption certificates until such time when a more comprehensive review of the entire summer flounder exemption certificate program can take place.

Commercial Scup quota management proposals for 2012: There were two proposals for the 2012 scup 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 2012; the second proposal was to increase starting possession limits of 20,000lbs/week for May/July/Sept sub periods, remove the winter 1 scup aggregate program to allow the full harvest limit of 50,000lbs/day, allow for electronic logbook reporting, and establish Division of Fish & Wildlife authority to move quota from the general category fishery to the floating fish trap sector. These combined proposals came from the Division.

With regard to ***status quo on starting possession limits***, there were no comments made on this proposal at the public hearing. With regard to ***the Division proposal***, to increase starting possession limits of 20,000lbs/week for May/July/Sept sub periods, and remove the winter 1 scup aggregate program to allow the full harvest limit of 50,000lbs/day, at the public hearing two comments were made on the starting possession limits. The concerns were that the Division should set the possession limits at their discretion rather than “boxing themselves in” with codified starting possession limits. The scup advisory panel (AP) did not have a quorum present therefore did not make any recommendations on this public hearing proposal. The final recommend from the Division was to increasing the sub-period possession limits to 5,000 pounds per week (instead of the initial proposal at 20,000) for the state summer periods and 50,000 per day for the winter federal period. The scup quota has grown substantially in the past two years so increased access in both the summer state management period and the winter federal management period is warranted. The Division also suggested making a technical change for the November sub period, which was to insert the word “day”, which had inadvertently been left out of regulation. At the Council meeting, the Council agreed with the Division recommendations for the scup sub-period possession limits and unanimously recommended adoption of the Division proposed starting possession limits and technical change.

As supported by the Council, and the Division, I urge adoption of the increased scup starting possession limits of 5,000 pounds per week (from 3,500) for the state summer periods May/July/September, and elimination of the winter 1 scup aggregate program to allow the full harvest limit of 50,000 pounds per day for the winter federal period.

Allow for electronic logbook reporting: At the public hearing there were a couple of comments in support of the electronic log book allowance and a suggestion that if the Division was going to allow electronic logbook reporting for all the endorsed fisheries then it should be handled in a

more comprehensive manner and applied to all the fisheries and not in a piecemeal manner. The scup advisory panel (AP) did not have a quorum present therefore did not make any recommendations on this public hearing proposal. The Division supports allowance for the electronic logbook reporting. At the Council meeting, the Council unanimously recommended adoption for the voluntary allowance of electronic logbook reporting.

As supported by the Council, and the Division, I urge adoption of the allowance for electronic logbook reporting for scup. I am aware however that the Division of Law Enforcement has opposed this measure believing that conventional logbooks retained on the vessel and filled in daily are needed to enforce compliance with aggregate limits.

Establish Division of Fish & Wildlife authority to move quota from the scup general category fishery to the floating fish trap sector: At the public hearing there was only one comment made and it was in opposition to the proposal. The individual pointed out that the scup general category sector had not been given an opportunity to fully utilize its capacity to harvest what was available to them and that it was premature and unnecessary to implement this authority. The Division responded by noting that the timing and spatial distribution of scup migrations varies considerably from year to year. Given the unpredictability, it is critical that the Division have the authority to transfer quota between the trap sector and general category. Current authority is one-way, allowing for transfer only from trap to general category. The Division recommended expanding that authority to a two-way format on the condition that consultation with the affected sector would occur.

At the Council meeting, the Council unanimously recommended to adopt language that would establish the authority for the Division to move quota from the scup general category fishery to the scup floating fish trap sector in order to effectively manage the scup quota. They further stipulated that any quota that was rolled over from the general category to the floating fish trap sector could not exceed the amount that had already been transferred from the floating fish trap sector into the general category.

As supported by the Council, and the Division, I urge adoption of establishing Division authority to move quota from the scup general category fishery to the floating fish trap sector as constrained by the Council and with consultation with the affected sector.

Commercial Black Sea Bass quota management proposals for 2012: There were five proposals for the 2012 black sea bass quota management plan that were brought forward for public comment. The first was a proposal to remain at status quo for 2012; the second proposal was to drop to 25 lbs/day (from 50 lbs/day) May through October; the third proposal was to develop an aggregate program from May through October; the fourth proposal was to create a fall sub period and remove the August closure if the quota increased modestly; the fifth proposal was to increase the starting possession limit from 50 to 100 lbs/day in the spring through fall sub periods and remove the August closure if the quota increased significantly.

At the public hearing a representative from the RI Commercial Rod & Reel Association indicated they were in support of the proposal to drop to 25 pounds per day from May through October with an August closure only if required. The group also noted they were opposed to the

four other proposals. An individual commented he was opposed to all the proposals and offered he would support an option that the Division would set via their discretion at one daily possession limit throughout the year and would prevent a closure. There were a few other comments in support of dropping the possession limit to 25 lbs/day (from 50 lbs/day) May through October, and one comment in support of creating a fall sub period and removing the August closure if the quota increased modestly. There was a comment in support of either developing an aggregate program from May through October or if not, to remain at status quo. He was opposed to dropping the possession limit to 25 lbs/day from May through October. Two written comments were received on this item and both were in support of creating an aggregate program from May through October. The black sea bass advisory panel (AP) did not have a quorum present so therefore did not make any recommendations on these public hearing proposals. However, the discussions from that body did create the ideas for many of the proposals that went to hearing.

The Division responded by noting it was not clear yet if the sea bass quota would be increased for 2012, and therefore recommended remaining at status quo by maintaining the current 50 pound starting possession limit and sub-period format. Should an increase in quota occur the Division has authority to increase possession limits after sub periods commence. The Council agreed with the Division and recommended to remain at status quo based on recent stock status information of the fishery.

As supported by the Council and the Division, I urge adoption of a status quo position for black sea bass commercial specifications in 2012 by maintaining the current 50 pounds per day starting possession limit for the May through October sub-period and to retain the current sub-period definitions.

Amendments to the Cod Management Plan to allow for a fillet law: Five options were brought forward for public comment. The first was a proposal for status quo - no regulations on filleting cod; the second option – no filleting of cod allowed; the third option – allow filleting of cod with retention of carcass; the fourth option – allow filleting of cod with fillet equal to minimum size; the fifth option - allow filleting of cod with fillet equal to specified size. At the public hearing two individuals commented in support to allow filleting of cod with retention of the carcass, with one speaker stating it should apply to commercial as well as recreational. One comment was made to remain at status quo, no regulations on filleting cod. The enforcement advisory panel (AP) met to discuss this public hearing item. By consensus they proposed to either; bring the fish in whole, have the racks with the fish, or allow a 14 inch minimum fillet size for cod or whatever size correlated to the current legal minimum size limit for cod. The Division recommended that the minimum fillet size for cod be set at 14inches. Available data indicates that most cod yielding a 14 inch fillet would be 22 inches or larger. The Division also anticipates exploring a program in which racks of filleted fish could be retained for enforcement inspection at the dock and then provided to lobster fishermen for bait.

The Council recommended combining two of the option, option # 3 (allow filleting of cod with retention of the carcass) and option #5 (a 14-inch minimum fillet size) on a per trip bases, which would be in effect from January 1, 2012 through April 30, 2012.

Taking into account the difficulty the Council had in formulating this motion, I would simply urge adoption of establishing a minimum fillet size limit for cod to be set at 14 inches, which has a high probability of deriving from a 22 inch cod or larger. A provision to allow filleting with retention of carcasses needs further work in light of state statute and pier regulations prohibiting discharge of solid wastes.

Time Sensitivity- Quota management plans require promulgation by January 1st of each year. Given the 20 days between filing with the secretary of state and effectiveness, staff needs to file no later than Monday December 12th. We would appreciate a decision by COB on Friday the 9th.



Approved for filing as presented



Janet L. Coit, Director



Date