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New England Fishery Management Council

50 WATER STREET | NEWBURYPORT, MASSACHUSETTS 01950 | PHONE 978 465 0492 | FAX 978 465 3116
C.M. "Rip" Cunningham, *Acting Chairman* | Paul J. Howard, *Executive Director*

August 22, 2011

Mr. David G. Simpson, Director
Marine Fisheries Division
CT Dept of Energy and Environmental Protection
PO Box 719, 333 Ferry Road
Old Lyme, CT 06371

Dear Dave:

As you may know, last year the New England Fishery Management Council set an Annual Catch Limit (ACL) for species caught in the Northeast Skate Complex fishery. The ACL applies to all skate landings regardless of where skates are caught or whether or not the vessel has a federal fishing permit. Federal fishing rules, however, do not apply to vessels fishing with state permits in state waters, which overlap the distribution of skates.

During the Council's annual skate annual monitoring review, it came to our attention that the proportion of skate landings derived from state waters increased from 3 percent to more than 12 percent in 2010. Much of this increase occurred because federal landings limits tightened on September 3 until April 30, when the total allowable landings limit was met. Some of the increase arose from updated monitoring procedures. Nonetheless, there are no skate limits in state waters and this may become a significant concern. Even after the new monitoring procedures have been applied, some states experienced substantial increases of skate landings from state waters.

The Council, therefore, would like to remind you of Section 306(b) of the Magnuson-Stevens Fishery Conservation and Management Act which contains expectations for states to take actions necessary to avoid adversely affecting a federal fishery management plan, such as the federal state plan. Compatible actions by states will improve our partnership and assist us in producing maximum sustainable yield from shared fishery resources.

For your information, I have summarized and compared state water skate landings from fishing years 2009 and 2010. Both years use the new monitoring procedures to tally landings. If you have any questions, or require additional information, please let me know.

Sincerely,

Paul J. Howard
Executive Director

Letters also sent to:

Mr. Paul Diodati, Director
Division of Marine Fisheries
251 Causeway Street
Boston, MA 02114

Ms. Janet Coit, Director
RI Department of Environmental Management
235 Promenade Street
Providence, RI 02908

Mr. Doug Grout, Chief
Marine Division
N.H. Fish and Game Department
225 Main Street
Durham, NH 03824

Mr. Patrick Keliher
Acting Commissioner
Maine Department of Marine Resources
21 State House Station
Augusta, ME 04333-0021

Mr. Thomas J. O'Connell, Director
Maryland DNR, Fisheries Service
Tawes State Office Building
580 Taylor Avenue
Annapolis, MD 21401

Mr. David Chanda, Director
Division of Fish and Wildlife
Dept of Environmental Protection
PO Box 400
Trenton, NJ 08625-0400

Mr. James Gilmore, Director
NYSDEC Bureau of Marine Resources
205 Belle Meade Road
E. Setauket, NY 11733

Mr. Steven G. Bowman, Commissioner
Marine Resources Commission
2600 Washington Ave., 3rd Floor
Newport News, VA 23607

Louis Daniel, Ph.D., Director
North Carolina Dept of Env. And Natl. Res.
Division of Marine Fisheries
PO Box 769
Morehead City, NC 28557

Mr. Patrick J. Emory, Director
Division of Fish & Wildlife
Dept of Natl Res & Env Control
89 Kings Highway
Dover, DE 19901

State Skate by State
Fishing Years 2009-2010

State	Wings		
	Live Pounds 2009	Live Pounds 2010	Change
CONNECTICUT	101,241	1,005	-99%
MARYLAND	37,682	-	-100%
MASSACHUSETTS	622,812	438,818	-30%
NEW HAMPSHIRE	26	7	-73%
NEW JERSEY	16,760	5,965	-64%
NEW YORK	373,402	879,999	136%
NORTH CAROLINA	-	9,025	
RHODE ISLAND	664,176	1,511,048	128%
VIRGINIA	5,368	131	-98%
Total	1,821,467	2,845,998	56%

State	Bait		
	Live Pounds 2009	Live Pounds 2010	Change
CONNECTICUT	613,366	121,256	-80%
MARYLAND	92,138	-	-100%
MASSACHUSETTS	116,965	108,672	-7%
NEW HAMPSHIRE	-	-	
NEW JERSEY	-	-	
NEW YORK	-	-	
NORTH CAROLINA	-	-	
RHODE ISLAND	312,819	1,119,107	258%
VIRGINIA	-	-	
Total	1,135,288	1,349,035	19%

Footnotes

Source: NMFS Northeast Regional Office

Run Date: July 15, 2011

Weights are live weights.

These data are the best available to NOAA's National Marine Fisheries Service (NMFS). Data sources for this report include: (1) Permits database; (2) Dealer database.



Paul J. Diodati
Director

Commonwealth of Massachusetts

Division of Marine Fisheries

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Deval Patrick
Governor

Timothy P. Murray
Lt. Governor

Richard K. Sullivan, Jr.
Secretary

Mary B. Griffin
Commissioner

August 26, 2011

Paul J. Howard, Executive Director
New England Fishery Management Council
50 Water Street
Newburyport, MA 01950

Dear Paul:

Paul Diodati received your August 22 letter regarding the Northeast Skate Complex fishery, specifically the lack of regulations in state waters compatible with Amendment 3 to the federal fishery management plan. I'm a bit surprised at and disappointed by the formality of your letter given your stated desire for an "improved partnership" with states for producing MSY from shared fishery resources.

You express concern that skate landings derived from state waters increased from 3 percent in fishing year (FY) 2009 to more than 12 percent in FY 2010, largely due to federal landings limits tightening after September 3 when the total allowable landings limit was met. I believe you're highlighting a Plan Development Team reference to "some fishermen in Southern New England switched to fishing with non-federal vessels to continue fishing for skates after the skate wing possession dropped from 5,000 lbs. to 500 lbs. on September 3." This PDT conclusion was based on "anecdotal reports" so I'm unsure if this state waters fishing occurred and to what extent. Also, as you note in your letter, "updated monitoring procedures" contributed to the increase. I'm left wondering if these procedures simply captured landings that went unnoticed in the past. Increases in state landings might be an artifact of better monitoring.

Having reviewed the tables enclosed with your letter, I note that Massachusetts' state waters skate landings decreased from 2009 to 2010, by 30% in the wing fishery and 7% in the bait fishery. The increase in state waters wing and bait landings is largely attributable to more landings in Rhode Island which comprised 63% of the state waters harvest in FY 2010 as compared to 33% in FY 2009. New York also showed a noteworthy increase.

Here is where an important point must be raised and investigated by the Council. I speculate that increased effort on skates in Rhode Island, and perhaps New York, has resulted from the new federal groundfish management regime. My anecdotal information is that low groundfish allocations have forced some fishermen, especially in R.I., to expand their target species to remain solvent. They have had to redirect their effort and find ways to survive hard quota management superimposed on sector management and allocations based solely on catch history.

If sector management in the groundfish fishery is responsible for the adverse impact on the skate fishery you describe (see your reference to “adversely affecting”), the Council may have inadvertently violated its own “sector policy” regarding “mortality controls” and should review sector operations plans. Amendment 16 requires that sector operations plans include identification of potential redirection of effort as a result of sector operations and any efforts to limit the adverse effects of such redirection of effort. This emphasizes the need for in-depth analyses of the impacts of sectors, one of the objectives for this and other operation plan requirements.

Paul and I with our staff intend to meet to review the skate fishery’s activity in Massachusetts state waters and discuss potential rules changes. I will inform you as to the outcome of these deliberations and whether to expect modifications to state regulations. As always, you’ll find DMF to be a willing and able partner respectful of federal requirements.

Sincerely,

A handwritten signature in black ink, appearing to read "David Pierce". The signature is fluid and cursive, with a large initial "D" and "P".

David Pierce, Ph.D.
Deputy Director

cc: Rip Cunningham
Terry Stockwell
Mark Gibson
Dave Simpson
James Gilmore



Paul J. Diodati
Director

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August 31, 2011

Paul J. Howard, Executive Director
New England Fishery Management Council
50 Water St.
Newburyport, MA 01950

Dear Paul:

This is a follow-up to our August 26 response on state waters' fishing for skates and your concern that states lack regulations compatible with Amendment 3 to the federal plan.

I suggest that the increase in Rhode Island skate landings might be due to the way in which federal permit holders renew their permits. Unlike with groundfish federal permits that must be renewed at the beginning of each year, I believe monkfish federal permits can be renewed at any time.

Monkfish fishermen in Rhode Island land large volumes of skate wings. What is most likely happening is that federal permit holders are not renewing their permit at the start of fishing year, and then they target monks – along with skates – with large mesh for a couple of months in Rhode Island waters. When catches fall off they renew the federal permit and then move back into the federal waters fishery.

Perhaps Council staff can analyze data by state and break the data into two groups: those that have only a state permit and those who qualify for a federal monkfish permit during prior year. If fishermen are taking advantage of a federal permit renewal loophole, the Council should request NMFS to change its renewal process, as it did for groundfish. If I'm correct, this federal permit renewal process might contribute to increased state waters' landings of monkfish as well. Again, Council staff can look into this. Always willing to help out in any way possible,

Sincerely yours,

David Pierce, Ph.D.
Deputy Director

cc Paul Diodati
Mark Gibson



Rhode Island
Department of Environmental Management



DIVISION OF FISH AND WILDLIFE

3 Fort Wetherill Rd
Jamestown, RI 02835

401 423-1920
FAX 401 423-1925
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TO: RI Marine Fisheries Council
FROM: Mark Gibson, Deputy Chief for Marine Fisheries DFW
DATE: September 1, 2011
SUBJECT: Skates Regulations for State Waters.

Included in your packet is an August 22nd letter from Paul Howard, chair of the New England Fishery Management Council, to Director Coit on the matter of skate landings in state waters. At the last NEFMC meeting, we discussed growing state water landings of skates and agreed to contact the states expressing concerns about a growing problem (summarized in the NEFMC July meeting report you received last month). Section 306(a) of Magnuson-Stevens recognizes the sovereignty and authority of states over their waters but in 306(b) authorizes the Secretary of Commerce to regulate fisheries in state waters for federal species if the state fails to support the federal plan. I also point out RIGL 20-2.1-9, "Powers and Duties of the Director", requirement 2iC to complement federal management programs. Our lack of management measures for skates in state waters could be viewed as inconsistent with RIGL and could invite a federal intervention given the Howard letter and data contained therein.

I recommend that the RIMFC convene a skate AP, either a new or existing panel, to discuss the issue and advise RIMFC on measures for the state waters skate fishery for the fishing year beginning May 1, 2012. Said measures could be brought to hearing early in 2012 and be considered by RIMFC for recommendation to the DEM Director before May 1st. In the interim, the Division will continue to evaluate the landings data to better frame the scope of the problem. We will also review the status of skate which has recently improved allowing for increases in the allowable catch.

cc Janet Coit- RIDEM
Paul Howard- NEFMC
Robert Ballou- RIDFW

