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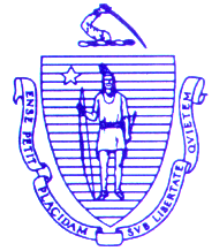
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### **MEMORANDUM**

TO: Marine Fisheries Advisory Commission

FROM: Paul Diodati, Director *Paul J. Diodati*

DATE: November 29, 2012

SUBJECT: Recreational Filleting

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### **Background**

Over the last few Marine Fisheries Advisory Commission (MFC) meetings, we've considered several different options to clarify the legality of at-sea filleting of recreationally caught fish. For the majority of species, the Code of Massachusetts Regulations (CMR) is silent on when recreational anglers may fillet their harvest, whether at-sea or ashore. Environmental police officers brought forward concerns on this point: if the intention is to prohibit filleting at-sea, successful prosecution is unlikely without an explicit rule; and if it is allowed, minimum size limits are easily undermined.

In addition, our discussions have brought to surface uncertainty or misgivings regarding the few species with rules addressing at-sea filleting – namely striped bass and groundfish.

- In the case of striped bass caught by private anglers<sup>1</sup>, the CMR's language prohibiting mutilation that interferes with or affects a proper and adequate measurement of the fish has been questioned as to its inclusion of filleting if the rack is kept for measurement.
- For striped bass caught aboard for-hire vessels<sup>2</sup>, the wisdom of relying on captains and crew to uphold size limits amidst financial motivation to please their patrons is debatable, particularly without a state rule that holds for-hire vessels responsible for their patrons' compliance.
- Lastly, allowing the landing of filleted groundfish<sup>3</sup>, despite the skin and fillet number requirements, is problematic for enforcement of minimum size limits because the majority of inspections occur along the shore at access points. Law enforcement also reported that the two square inch skin requirement was sometimes inadequate for species identification, such as when saved on the bottom-side of a flounder.

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<sup>1</sup> 6.07(7)(e): It shall be unlawful for a recreational fisherman to mutilate any striped bass in such a way as to interfere with or affect a proper and adequate measurement of the fish; such mutilation shall be prima facie evidence of a violation of this section.

<sup>2</sup> 6.07(4)(g): For-hire vessels permitted under the authority of 322 CMR 7.01(4) may fillet or process legal sized striped bass for their recreational customers at sea provided that:

1. not more than four fillets taken from legal striped bass, minimum of 28" total length, are in possession for each customer of that trip representing the equivalent of two fish per customer; the skin must be left on the fillet; and
2. the total number of striped bass onboard the fishing vessel does not exceed twice the number of persons.

<sup>3</sup> 6.03(13)(c): It shall be unlawful for recreational fishermen to land filets of groundfish species without two square inches or more of skin on each filet and in any quantity more than two filets times the possession limit per recreational fishermen or vessel, whichever is less.

## **Prior Recommendations**

As stated in my June 5, 2012 memo, my initial opinion on this topic was that maintaining harvested fish in a manner allowing for total length (TL) measurement was necessary for law enforcement to determine compliance with minimum sizes (all given in TL). I thus interpreted the CMR as allowing filleting at-sea in the following situations:

1. For those species not regulated by size limits;
2. For those species for which it is explicitly authorized (i.e., groundfish, for-hire caught striped bass);
3. When the fillet meets the minimum size limit (and there is no maximum size limit);
4. When the rack is kept and it indicates that the fish was harvested in accordance with the size limits; or
5. After the vessel is tied up.

At the June MFC business meeting, concern was raised with requiring the retention of racks until after the trip is concluded. Anglers may prefer to fillet fish at sea in the interest of easier storage (whether in a cooler during the trip or in a refrigerator/freezer once home). Additionally, some for-hire patrons rely on the crew to fillet their catch either for convenience or when less-experienced in technique. However, rack disposal once ashore is problematic as most access points lack appropriate receptacles and municipalities discourage the practice of discarding racks in harbors.

With this in mind, I attempted to find a compromise that enforcement officials and constituents would be amenable to. Rather than require retention of racks (from fish with minimum size limits and undersized fillets) until the vessel was docked, I suggested in my August 28, 2012 memo that these racks could be discarded after the vessel had completed fishing operations, all fishing gear had been stowed, and the vessel was in the act of returning to port. This would provide enforcement officers with a window of time – during at-sea inspections – to check for compliance, but still allow for anglers to cleanly dispose of racks and for-hire crew members to increase their remunerations by filleting their patrons' catch during the return trip to port.

It was still unclear how this proposal would interact with the other existing at-sea filleting regulations. Based on Commission support for consistency across species, but with maintenance of the long-standing regulations specific to the mutilation of striped bass caught by private anglers, I proposed in my September 27, 2012 memo that rack retention until fishing conclusion would be in addition to the groundfish and for-hire striped bass requirements pertaining to skin and number of fillets. The requirement to land recreationally caught striped bass in such a manner that a proper and adequate measurement can be obtained would be unchanged.

However, at the September MFC business meeting, law enforcement officers indicated their severe reservations allowing filleting at-sea, regardless of any rack retention requirement. The majority of compliance inspections are performed on shore, and permitting discard of racks before the return to port renders minimum size limits unenforceable. Officers cautioned against reliance on a requirement for rack retention to shore as well, indicating possible complications in matching fillets to racks and concern about successful prosecution of any violations. They also supported requiring the full skin remain attached to the fillet (even if mostly pared off and only attached at one end of the fillet), and shared their skepticisms with for-hire crew conducting filleting without a rule that holds for-hire vessels responsible for their patrons' compliance.

Given that this issue was embarked upon due to concerns from law enforcement, I found it very difficult to move forward with a recommendation that did not ameliorate those concerns, and perhaps even aggravated them. Therefore, in October, I and other Division staff met with Major Len Roberts and Captains Pat Moran and John Tulik to search for another solution. This meeting suggested we abandon the rack retention compromise, and move in the direction of minimum fillet sizes for certain species.

## **New Approach**

While their ideal situation would be a prohibition on any at-sea filleting of species with minimum size limits, minimum fillet sizes were introduced as an acceptable option from a law enforcement standpoint. Determining the association between fillet length and total length and how icing effects fillet length will require field study, but the research can be limited to certain species. As at-sea filleting is most useful for large fish that don't store and transport easily, we concluded that those species with the largest minimum sizes are best suited to having minimum fillet sizes. For the most part, this would retain an allowance for at-sea filleting of most species for which it is currently practiced.

Our new direction for rules regarding filleting of recreationally caught fish is as follows:

1. Recreationally caught fish must be landed with head and tail intact (meaning evisceration is permissible) and remain that way until reaching the domicile, except:
  - a. Species without minimum sizes may be filleted at-sea or before reaching the domicile; and
  - b. Species for which a minimum size fillet is established may be filleted at-sea or before reaching the domicile provided the fillets meet the minimum fillet size.
2. For species for which filleting is permissible, skin must remain attached to any fillet and no angler may possess fillets in any quantity more than two-times the possession limit.

*Marine Fisheries* is proposing to develop a minimum fillet size for cod, haddock and striped bass caught on board a for-hire vessel. We already explicitly permit the at-sea filleting of these species and several other states have implemented minimum fillet lengths for cod and haddock. New Hampshire has a 12" cod fillet minimum (for a 19" TL limit) and a 12" haddock fillet minimum (for an 18" TL limit). Rhode Island has a 14" cod fillet minimum (for a 22" TL limit). The Commonwealth has 19", 22" and 24" TL cod minimum sizes depending on time/area fished, and an 18" TL haddock minimum size.

*Marine Fisheries* is also willing to consider adopting a minimum fillet size for monkfish and winter flounder. The filleting of winter flounder and monkfish are explicitly permissible under current rules. While monkfish are not commonly caught by recreational anglers, a monkfish tail size can be easily adopted from the commercial rule (11"), as the minimum size is uniform at 17" TL. With regards to winter flounder, its 12" TL minimum size limit does not fit our large size limit criterion for needing a fillet size; however, filleting may be historical practice for winter flounder charter businesses. A winter flounder fillet size could be specific to fish caught aboard for-hire vessels. MFC input on adopting a minimum fillet size for these two species is requested.

Under this approach, striped bass caught by private anglers falls into the category of having head and tail intact until reaching the domicile. This upholds the Division's long-standing interpretation that the "no mutilation" rule was meant to allow acts such as evisceration and de-scaling but prohibit filleting until the fish reached the domicile. That interpretation was based on 1) the history of the regulation, being implemented at a time of strict enforcement of stringent conservation measures, and 2) the rule lacking any further guidance about the number of fillets allowed or leaving skin on the fillets, suggesting this type of processing was not being authorized. I'm aware that some have suggested the current rule could allow filleting provided the rack is kept for measurement (despite the nagging question of why fillet if the rack must be kept to the domicile); properly written, the new rule would clear up any confusion as to this issue.

This new approach using minimum fillet sizes is supported by law enforcement, is in line with Commission support for consistency across species (with a special exception for striped bass caught by private anglers), and will provide for the ability to fillet at-sea most fish for which it is customary and dispose of racks without creating an environmental or visual problem at the launch area.

### **Next Steps**

Moving forward with this new approach, Division staff will commence sampling this winter to determine minimum fillet sizes for the selected species, and legal counsel will be sought in developing draft regulatory language. Ideally, public hearings would occur late winter or early spring, and the rules be implemented in time for the bulk of the 2013 recreational fishing season; however, it's more likely that new rules will not be in place prior to the 2014 season.