

Rhode Island Chapter of Sierra Club
Testimony on H 5686 Sub A and H 5690 Rhode Island *Freedom To Fish Act*

Presented by Caroline A. Karp, Esq., Sr. Lecturer, Brown University
15 June 2003

Dear Chairperson Ginaitt and Members of the House Environment and Natural Resources Committee,

Thank you for providing this opportunity to comment on H 5686 Sub A and H5690, two versions of the Rhode Island *Freedom to Fish Act*.

My name is Caroline A. Karp. I am a Senior Lecturer in the Center for Environmental Studies at Brown University. I have worked on marine and fisheries policy issues in Rhode Island in various capacities since 1985. I currently serve on the national Sierra Club's Marine Committee. I submit this testimony on behalf of the Rhode Island Chapter of Sierra Club.

SUMMARY:

Many historically important Rhode Island fish and shellfish species are overfished or are facing unsustainable fishing pressure according to the NOAA National Marine Fisheries Service (2003) and the Rhode Island Department of Environmental Management (2001). Recreational fishers contribute significantly to pressure on the State's fishery resources (RIDEM 2001, 2003). Habitat destruction and damage also occur because of the types of gear used in fishing (Safina 1998).

Given this backdrop, the various *Freedom to Fish* proposals (H5685, H5686 sub A, H5690, S 0581, S 0582) represent a shameless and poorly timed effort to limit the State's options for protecting and restoring our marine resource legacy. The Committee should take particular note of the increasingly impressive body of scientific evidence in support of using temporary or permanent marine reserves as one of many tools that can be used to help protect, conserve or restore depleted, overexploited or rare marine species and critical marine habitats (Pew Oceans Commission 2003, National Academy of Sciences 2001). In addition, the Committee should note that marine reserves and protected areas can and do serve a wide variety of social and management functions, including but not limited to:

- 1) Protecting areas of high conservation value, including archaeologically or culturally important sites;
- 2) Protecting important, critical or essential fisheries breeding, nursery or grow-out habitat;
- 3) Contributing to protection of biodiversity;
- 4) Contributing to fisheries management and ecologically sustainable use of marine resources;
- 5) Providing protected corridors between terrestrial, estuarine and marine habitats to allow movement of migratory species;
- 6) Providing opportunities for education and research and public appreciation of marine resources;
- 7) Generating income from eco-tourism;
- 8) Limiting destructive use of marine habitats.

Therefore, the RI Chapter of Sierra Club opposes the *Freedom to Fish* bills for the following reasons:

1. The general public's legacy interest in the long term survival of native marine species, their habitats and the ability of future generations to fish is greater than the right of special interests to catch the "last fish" in Rhode Island waters. H5686 sub A §20-3.2-2 (c) and (d) and H 5690 refer only to the people engaged in commercial and recreational fishing without reference to the general public's ongoing legacy interest in commercially and and non-commercially important living marine resources and their associated marine habitats.

2. The *Freedom to Fish Acts* impermissibly challenge the State's authority to use temporary or permanent closures to protect the public's legacy interest in living marine resources and their associated habitats. The general public has a constitutionally protected interest in the long term protection, conservation and management of the State's living marine resources under RI Constitution Article I §17 which states, in part,

Section 17. Fishery rights Shore privileges Preservation of natural resources. The people shall continue to enjoy and freely exercise all the rights of fishery, and the privileges of the shore, to which they have been heretofore entitled under the charter and usages of this state, including but not limited to fishing from the shore, the gathering of seaweed, leaving the shore to swim in the sea and passage along the shore; **and they shall be secure in their rights to the use and**

enjoyment of the natural resources of the state with due regard for the preservation of their values; and it shall be the duty of the general assembly to provide for the conservation of the air, land, water, plant, animal, mineral and other natural resources of the state, and to adopt all means necessary and proper by law to protect the natural environment of the people of the state by providing adequate resource planning for the control and regulation of the use of the natural resources of the state and for the preservation, regeneration and restoration of the natural environment of the state. (emphasis added)

3. H5686 and H 5690 §20-3-8 treat temporary and permanent closures of Rhode Island waters as a management measure of “last resort”. However, marine reserves and marine protected areas can serve a wide variety of socially valuable and desirable functions. (See references provided below.) Fisheries management is only one of many reasons that RIDEM and/or CRMC might conclude that a temporary and permanent closure is an appropriate strategy for protecting the public’s legacy interest in living, archaeologically or culturally important marine resources.

4. Responsible State authorities, RIDEM and CRMC, should consider all relevant information, scientific and otherwise, when considering whether a temporary or permanent marine closure is appropriate. The *Freedom to Fish* bills establish an impossibly high standard of judicially reviewable scientific evidence in order for RIDEM or CRMC to justify use of marine reserves to accomplish a legitimate State interest (H5686 §20-3.2-2 (g); § 20-3.2-3 (2)). Therefore, all references to “sound scientific information” §20-3.2-2(g); § 20-3.2-3 (2) should be deleted and/or replaced with “best available information”.

5. The various *Freedom to Fish* bills (H5685, H5690, S) impermissibly limit the State’s existing authority to close marine waters to commercial or recreational fishing in order to protect public health, safety and welfare, including RIDEM’s and/or CRMC’s duty to conserve the State’s natural resources.

The RI Chapter of Sierra Club also proposes alternative language for the Committee’s consideration (attached).

RI CHAPTER OF SIERRA CLUB'S TESTIMONY AND RECOMMENDATIONS:

Many historically important Rhode Island fish and shellfish species are overfished or are facing unsustainable fishing pressure according to the NOAA National Marine Fisheries Service (NOAA-NMFS) and the Rhode Island Department of Environmental Management (RIDEM). Recreational fishers contribute significantly to pressure on the State's fishery resources. Habitat destruction and loss also occur because of the types of gear used in fishing.

The RI Chapter of Sierra Club considers these bills to be unnecessary to the extent they merely re-state:

- the RI Department of Environmental Management's (RIDEM) existing responsibility to "protect fish and the right to fish in Rhode Island's marine waters (20-3.2-2 (e))", and
- the RIDEM's or Coastal Resources Management Council's (CRMC) existing authority to "close marine waters or portions thereof to fishing [in order] to manage marine fisheries or other marine resources (§ 20-3.2-2 (f))".

The RI Chapter of Sierra Club opposes H5686 sub-A and H5690 for the following reasons:

1. The general public's legacy interest in the long term survival of native marine species, their habitats and the ability of future generations to fish is greater than the right of special interests to catch the "last fish" in Rhode Island waters. H5686 sub A §20-3.2-2 (c) and (d) and H 5690 refer only to the people engaged in commercial and recreational fishing without reference to the general public's ongoing legacy interest in commercially and non-commercially important living marine resources and their associated marine habitats.

2. Article I §17 of the Rhode Island Constitution clearly states that the public's interest in the long term viability and sustainability of commercially AND non-commercially important fish and shellfish species and their "essential habitat" is superior to the interest of any single user group.

Section 17. Fishery rights Shore privileges Preservation of natural resources. The people shall continue to enjoy and freely exercise all the rights of fishery, and the privileges of the shore, to which they have been heretofore entitled under the charter and usages of this state, including but not limited to fishing from the shore, the gathering of seaweed, leaving the shore to swim in the sea and passage along the shore; and they shall be secure in their rights to the use and enjoyment of the natural resources of the state with due regard for the preservation of their values; and it shall be the duty of the general assembly to provide for the conservation of the air, land, water, plant, animal, mineral and other natural resources of the state, and to adopt all means necessary and proper by law to protect the natural environment of the people of the state by providing adequate resource planning for the control and regulation of the use of the natural resources of the state and for the preservation, regeneration and restoration of the natural environment of the state. [See proposed language in §20-3.2-2(a)]

3. The public's interest in the long term protection, conservation and restoration of commercially AND non-commercially important fish and shellfish species includes an interest in protection of their associated critical or "essential" marine habitats. [See proposed language in §20-3.2-2(a)]

4. All references to "sound scientific information" §20-3.2-2(a) should be deleted. These sections appear to create a legal right of action should some party wish to challenge a Departmental decision to maintain a closure based on their interpretation of the scientific record. The Department should consider the best currently available information of all types when it adopts "management measures, including the closure of marine waters" to protect, conserve and restore Rhode Island's marine resources. [SEE proposed language in §20-3.2-2 (g); §20-3.2-3(2)]

5. The general public should be included as an "affected party" in all proceedings concerning measures proposed by the Department with respect to the long term protection, conservation and restoration of commercially AND non-commercially important fish and shellfish species includes an interest in protection of associated marine habitats. [SEE proposed language in §20-3.2-2 (g)]

Thank you for the opportunity to comment. Sincerely,

Caroline A. Karp, Esq, on behalf of the Rhode Island Chapter of Sierra Club
Senior Lecturer, Center for Environmental Studies, Brown University
Former Director, Narragansett Bay Estuary Program

cc. Chair, Senate Environment and Agriculture Committee
V. Newman, Chair, Marine Committee, National Sierra Club
Dr. B. Marston, Chair, Executive Committee, RI Chapter of Sierra Club

(Some) Sources:

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Rhode Island Chapter of Sierra Club
Proposed Revisions to 2003 -- H 5686 Sub A
Submitted by C.A.Karp 06/16/03
STATE OF RHODE ISLAND

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IN GENERAL ASSEMBLY
JANUARY SESSION, A.D. 2003

A N A C T
RELATING TO FISHING

Introduced By: Representatives Palumbo, Long, Jacquard, Smith and McCauley

Date Introduced: February 11, 2003

Referred To: Joint Environment & Energy

It is enacted by the General Assembly as follows:

SECTION 1. Title 20 of the General Laws entitled "Fish and Wildlife" is hereby amended by adding thereto the following chapter:

Chapter 3.2

Rhode Island Freedom To Fish Act

20-3.2-1. Short Title. -- This chapter shall be known as the "Rhode Island Freedom to Fish Act."

20-3.2-2. Findings. -- The general assembly finds and declares:

(a) That the people of the State of Rhode Island have an ongoing interest in the sound management of commercially and non-commercially important marine fish and shellfish species and their associated habitats.

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~~(a)-(b)~~ That marine fisheries have been important to the way of life of people in Rhode Island throughout its history;

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~~(b)-(c)~~ Marine fisheries support commercial operations and recreational activities, both of which are significant contributors to the state's economy; ~~(d)~~ The rights and interests of people to engage in commercial and recreational fishing in Rhode Island's marine waters need to be recognized and protected;

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(e) Rhode Island has historically managed its marine fisheries for the benefit of the people of the state, as an ecological asset, and as a source of food, income, and recreation;

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~~(e)~~ (f) Protecting fish, shellfish, essential marine habitats and the right to fish in Rhode Island's marine waters must be managed together;

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~~(f)~~ (g) Various management measures, including the closure of marine waters or portions thereof to fishing, can be utilized to manage marine fisheries, shellfish, essential marine habitats or other marine resources, but such measures must be developed in response to specific conservation or restoration needs, be based on the best currently available information, and emanate from an open management and regulatory process, incorporating full input from all affected stakeholders, including the general public, conducted pursuant to the general laws of the State of Rhode Island.

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20-3.2-3. Freedom to Fish – (a) The marine waters of Rhode Island, or portions thereof, shall not be closed to recreational or commercial fishing unless such closure is:

(1) deemed necessary in order to protect, manage or restore marine fisheries, shellfish, essential marine habitats, or other marine resources, protect public health or safety, or address some other public purpose;

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(2) based on best currently available information; and

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(3) developed via public review and stakeholder input through RIGL chapter 42-35 and other applicable state law and with the advise of the marine fisheries council; except where the director deems it necessary to institute a closure via emergency rule, in which case the regulation must meet the standards set forth by RIGL chapter 42-35 and have an effective period of not more than 120 days.

(b) Any marine waters of Rhode Island, or portions thereof, that are closed to recreational or commercial fishing shall be reopened if, or when the original justification for such closure ceases to apply.

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SECTION 2. This act shall take effect upon passage.

EXPLANATION BY THE LEGISLATIVE COUNCIL OF
AN ACT RELATING TO FISHING .: .: .:

This act would prevent any closure of Rhode Island marine waters to fishing unless such closure is sufficiently justified and subject to full public review and input.