

**RHODE ISLAND DEPARTMENT OF ENVIRONMENTAL MANAGEMENT
DIVISION OF FISH AND WILDLIFE
MARINE FISHERIES SECTION**

PUBLIC NOTICE CONCERNING PROPOSED REGULATORY CHANGES

Pursuant to the provisions of Chapters 42-17.1 and 20-3 of the General Laws of Rhode Island as amended, and in accordance with the Administrative Procedures Act Chapter 42-35 of the General Laws, the Director of the Department of Environmental Management (DEM) proposes amendments to the Rhode Island Marine Fisheries Regulations and gives notice of intent to hold a public hearing to afford interested parties the opportunity for public comment.

Public comment will be solicited on the following proposals:

- 1) Amendments to Part VII - Minimum Sizes of Fish/Shellfish, regarding management for **recreational Summer Flounder** (section 7.7.4);
- 2) Amendments to Part VII - Minimum Sizes of Fish/Shellfish, regarding management for **recreational Winter flounder** (section 7.8.1-2);
- 3) Amendments to Part VII - Minimum Sizes of Fish/Shellfish, regarding management for **recreational Tautog** (section 7.9.1);
- 4) Amendments to Part VII - Minimum Sizes of Fish/Shellfish, regarding management for **commercial Tautog** (section 7.9.2);
- 5) Amendments to Part VII - Minimum Sizes of Fish/Shellfish, regarding management for **recreational Scup** (section 7.11.3);
- 6) Amendments to Part VII - Minimum Sizes of Fish/Shellfish, regarding management for **recreational Black Sea Bass** (section 7.14.2);
- 7) Amendments to Part VII - Minimum Sizes of Fish/Shellfish, regarding management for **Coastal Sharks** (section 7.24);
- 8) Amendments to Part VII - Minimum Sizes of Fish/Shellfish, in their entirety, for general editing: to remove duplicative language; to add and/or correct statutory citations; and to add general provisions regarding possession limit changes, transiting, reporting requirements, penalties and appeals;
- 9) Amendments to Part XII – Striped Bass, regarding management for **recreational Striped Bass**;
- 10) Amendments to Part XII – Striped Bass, regarding management for **commercial Striped Bass**;
- 11) Amendments to Part XII – Striped Bass, regarding management for **commercial Striped Bass floating fish trap**;
- 12) Amendments to Part XII – Striped Bass, in their entirety, for general editing; to remove duplicative language; to correct statutory citations; and to add general provisions regarding possession limit changes, penalties and appeals;
- 13) Amendments to Part IV – Shellfish, regarding **correcting two technical errors delineating the borders of the Bristol Harbor Shellfish Management Area** (section 4.22);
- 14) Amendments to Part IV – Shellfish, regarding management of **Conch** (section 4.35); **including addition of provision regarding a Fishery Closure due to Eminent Public Health Risk (Bio-toxins)**;

- 15) Amendments to Part IV - Shellfish, in their entirety: to re-format numbering/lettering of sections; to remove duplicative language; for general editing; to add and/or clarify descriptions of Shellfish Management Areas; to add and/or correct several statutory citations; and to add general provisions regarding penalties and appeals;
- 16) Amendments to Part III – Marine Fisheries Council, to remove the section regarding the description of Shellfish Management Areas (section 3.6);
- 17) Amendments to Part III – Marine Fisheries Council, in their entirety, for general editing; and to remove duplicative language
- 18) Amendments to Part XI – Commercial Fisheries, regarding a **commercial fishing prohibition in designated experimental artificial reef locations in the Narragansett Bay Marine Life Management Area**;
- 19) Amendments to Part XI – Commercial Fisheries, regarding general editing; to remove duplicative language; to correct statutory citations; to clarify descriptions of Marine Life Management Areas; and add general provision for penalties and appeals;
- 20) Amendments to Part XVI – Menhaden regarding commercial Menhaden fisheries;
- 21) Amendments to Part XVI – Menhaden, regarding general editing; to remove duplicative language; to correct statutory citations; and to add general provision for penalties and appeals.

The public hearing will commence at **6:00 PM** on **Tuesday, March 25, 2014** in the University of Rhode Island, Graduate School of Oceanography, Corless Auditorium, South Ferry Road, Narragansett, RI 02882. The room is accessible to the disabled. Interpreter services for the deaf and hard of hearing will be provided if such services are requested at least two (2) weeks prior to the hearing by contacting the RI Commission on the Deaf and Hard of Hearing at (401) 222-5300; or (401) 222-5301 (TTY); or <http://www.cdhh.ri.gov/>.

Written comments concerning the regulations proposed for promulgation by the DEM may be submitted to the Division of Fish and Wildlife, 3 Fort Wetherill Road, Jamestown, RI 02835 no later than 12:00 Noon on March 25, 2014. Comments must be submitted directly to Peter Duhamel via email at peter.duhamel@dem.ri.gov or regular mail. A recording of the hearing will be made by DEM staff.

The Department has determined that small businesses may be adversely impacted by the proposed regulations. The public hearing is being conducted to solicit comment on the proposals and to allow public input from small businesses or any cities or towns, which may be adversely affected. Small businesses which are either currently licensed or in the future may seek permission to harvest, buy, sell, or produce seafood products as well as the small businesses that provide services related to those engaged in such industries and small businesses which buy, sell, or produce products or provide services related to fishing are requested to comment on the proposed regulations on how such proposed action can be changed to minimize the impact on those small businesses affected.

A copy of the proposed regulations will be available for examination from February 21 through March 25, 2014 by mail or at the offices of the Division of Fish and Wildlife located at 3 Fort Wetherill Road, Jamestown, RI 02835. Electronic copies of the proposed regulations will also be available on the DEM website at the following web address: <http://www.dem.ri.gov/programs/bnatres/fishwild/pn032514.htm>.

Mark Gibson,
Deputy Chief



STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS
DEPARTMENT OF ENVIRONMENTAL MANAGEMENT

BUREAU OF NATURAL RESOURCES
FISH AND WILDLIFE
&
LAW ENFORCEMENT

RHODE ISLAND MARINE FISHERIES
~~STATUTES AND~~ REGULATIONS

Part XII
Striped Bass



~~March 22, 2013~~

ANNOTATED REGULATIONS
MARCH 25, 2014 PUBLIC HEARING

AUTHORITY: These regulations are adopted pursuant to Title 20, Chapters 42-17.1, 42-17.6, and 42-17.7, and in accordance with Chapter 42-35-18(b)(5), Administrative Procedures Act of the Rhode Island General Laws of 1956, as amended.

PUBLIC HEARING ITEM # 12

General editing; to remove duplicative language; to correct statutory citations; and to add general provisions regarding possession limit changes, penalties and appeals;

~~STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS
— DEPARTMENT OF ENVIRONMENTAL MANAGEMENT~~

~~BUREAU OF NATURAL RESOURCES~~

~~FISH AND WILDLIFE
&
LAW ENFORCEMENT~~

**~~RHODE ISLAND MARINE FISHERIES
STATUTES AND REGULATIONS~~**

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~~STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS
DEPARTMENT OF ENVIRONMENTAL MANAGEMENT~~

~~BUREAU OF NATURAL RESOURCES~~

~~FISH AND WILDLIFE &
LAW ENFORCEMENT~~

~~**RHODE ISLAND MARINE FISHERIES
STATUTES AND REGULATIONS**~~

PURPOSE

The purpose of these rules and regulations is to supplement and simplify and/or clarify existing regulations in order to efficiently manage the marine resources of Rhode Island.

AUTHORITY

These regulations are adopted pursuant to Title 20, Chapters 42-17.1, 42-17.6, and 42-17.7, and in accordance with Chapter 42-35-18(b)(5), Administrative Procedures Act of the Rhode Island General Laws of 1956, as amended.

~~**ADMINISTRATIVE FINDINGS**~~

~~Rules and regulations are based upon the need to modify existing regulations in accordance with Chapter 42-35 Administrative Procedures Act of the Rhode Island General Laws of 1956, as amended.~~

APPLICATION

The terms and provisions of these rules and regulations shall be liberally construed to permit the Department to effectuate the purposes of state law, goals, and policies.

DEFINITIONS

See Rhode Island Marine Statutes and Regulations, Part I, '1.3.

SEVERABILITY

If any provision of these Rules and Regulations, or the application thereof to any person or circumstances, is held invalid by a court of competent jurisdiction, the validity of the remainder of the Rules and Regulations shall not be affected thereby.

SUPERSEDED RULES AND REGULATIONS

On the effective date of these rules and regulations, all previous rules and regulations, and any policies regarding the administration and enforcement of Part XII shall be superseded. However, any enforcement action taken by, or application submitted to, the Department prior to the effective date of these Rules and Regulations shall be governed by the Rules and Regulations in effect at the time the enforcement action was taken, or application filed.

R.I. Marine Fisheries ~~Statutes and~~ Regulations
PART XII - STRIPED BASS

PUBLIC HEARING ITEM # 9
Recreational Striped Bass

Option 1 - Status Quo:

12.1 Striped Bass Size/Possession Limits/Season in the Recreational Striped Bass Fisheries:

12.1.1 - ~~Except as provided in Parts 12.3 and 12.5,~~ **Minimum size:** ~~No person shall possess in Rhode Island any Striped bass which measures less than~~ Twenty-eight inches (28") in total length, whether caught within the jurisdiction of this State, or otherwise.

12.1.2 - Season: There is no closed season for **recreational** striped bass.

12.1.3 - ~~Except as provided in Parts 12.3 and 12.5~~ **Possession limit:** ~~No person shall possess, per calendar day, more than~~ Two (2) Striped bass, whether caught within the jurisdiction of Rhode Island or otherwise.

(a) Possession limit compliance aboard vessels:

(i) Licensed party/charter vessels: Possession limit compliance aboard licensed party/charter vessels will be determined by dividing the number of fish by the number of fishermen onboard the boat.

(ii) Multiple licensed recreational fishermen fishing from a single vessel: Possession limit compliance aboard vessels with multiple licensed fishermen will be determined by dividing the number of fish by the number of licensed fishermen on board said vessel.

~~Compliance with the possession limit aboard vessels will be determined by dividing the number of fish onboard a vessel by the number of recreational fishermen onboard said vessel. (RIMF REGULATION) (Penalty Part 12.2); (RIGL 20-4-11)~~

12.2: Striped Bass Violations - Penalties ~~-- Any person, firm, or corporation shall be fined not more than fifty dollars (\$50) for each striped bass taken, possessed, sold, possessed for sale, or offered for sale in violation of the provisions of RIGL Chapter 20-4. In addition to the fine, the fish trap license of the person, firm, or corporation violating the second provision of § 20-4-12 of this Chapter shall be suspended for a period of one (1) year. (RIGL 20-4-11)~~ **Possession limit changes: Any modifications made to the possession limit as set forth in these regulations will be promulgated in the RI Marine Fisheries regulations (RIMFR) Part III.**

12.3 Striped Bass Size/Possession Limits in the Commercial Striped Bass Fisheries – General Category:

12.3.1 Minimum size: ~~Except as provided in Part 12.5, any person meeting the requirements of RIGL §§ 20-2-26, or 20-2-27, or 20-2-28.1, shall be allowed to take or possess, Striped bass which measure~~ Thirty four (34) inches or greater in total length, whether caught within the jurisdiction of this state or otherwise. ~~Except as provided for in section 12.5 or 12.6, no person shall in any manner take and/or possess in Rhode Island more than the allowable limit established by the Rhode Island Department of Environmental Management. When the Division of Fish and Wildlife has determined that the annual quota established by the Atlantic States Marine Fisheries Commission (ASMFC) has been filled, the commercial sale of striped bass will terminate and the season will be closed. A notice of the closure will be submitted to the Secretary of State to be effective upon filing.~~

PUBLIC HEARING ITEM # 10
Commercial Striped Bass

Option 1 - Change season

12.4 - Season: During a single calendar year, the general category Striped bass fishery shall be allowed to harvest not more than sixty-one percent (61%) of the annual Rhode Island commercial quota.

January 1—June 5	The commercial fishery will be CLOSED from January 1 through June 5, annually.
June 6—August 31	<p>Seventy percent (70%) of the entire commercial quota will be available from June 6—August 31. The possession limit will be five (5) fish per person per calendar day, or if fishing from a vessel five (5) fish per vessel per calendar day.</p> <p>The fishery will be closed in each calendar week from 12:00 AM Friday until 11:59 PM Saturday during this sub-period.</p> <p>There will be no commercial possession or sale of striped bass on these days for non-floating trap net commercial fishermen.</p> <p>The fishery will close once seventy percent (70%) of the entire commercial quota is projected to be harvested if prior to August 31.</p>

<p>September 8 – December 31</p>	<p>Thirty percent (30%) of the entire commercial quota will be available from September 8 through December 31.</p> <p>The possession limit will be five (5) fish per person per calendar day, or if fishing from a vessel five (5) fish per vessel per calendar day.</p> <p>The fishery will be closed in each calendar week from 12:00 AM Friday until 11:59 PM Saturday during this sub-period.</p> <p>There will be no commercial possession or sale of striped bass on these days for non-floating trap net commercial fishermen. The fishery will close when the entire commercial quota is projected to be harvested.</p>
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~~12.4.1 - January 1 – June 57: The commercial fishery will be CLOSED from January 1 through June 5, annually.~~

~~12.4.2 - June 68 – August 31: Seventy percent (70%) of the entire commercial general category quota will be available from June 6 – August 31 in this sub-period.~~

~~(a) Possession limit: The possession limit will be During this sub-period, five (5) fish per person per calendar day, or if fishing from a vessel, five (5) fish per vessel per calendar day.~~

~~(b) The fishery will be closed in each calendar week from 12:00 AM Friday until 11:59 PM Saturday during this sub-period. There will be no commercial possession or sale of Striped bass on these days for non-floating trap net general category commercial fishermen.~~

~~(c) The fishery sub-period will close once seventy percent (70%) of the entire commercial general category quota is projected to be harvested if prior to August 31.~~

~~12.4.3 - September 8 – December 31: Thirty percent (30%) of the entire commercial general category quota will be available from September 8 through December 31 in this sub-period.~~

~~(a) Possession limit: The possession limit will be During this sub-period, five (5) fish per person per calendar day, or if fishing from a vessel, five (5) fish per vessel per calendar day.~~

(b) The fishery will be closed in each calendar week from 12:00 AM Friday until 11:59 PM Saturday during this sub period. There will be no commercial possession or sale of Striped bass on these days for ~~non-floating trap net~~ **general category** commercial fishermen.

(c) The ~~fishery~~ **sub-period** will close when **30% of** the ~~entire commercial~~ **general category** quota is projected to be harvested.

(d) In addition, if ~~Fish and Wildlife~~ **(DFW)** determines that the quota will be exceeded or will not be met before the end of the fall season, ~~Fish and Wildlife~~ **(DFW)** may adjust that catch rate accordingly on or after September 15 annually.

PUBLIC HEARING ITEM # 11
Commercial Striped Bass floating fish trap

Option 1 - Roll-over provision and change season:

If the Division estimates that the Floating Fish Trap sector will not fully utilize its striped bass allocation prior to the end of the season, beginning on October 15, the Division has the authority to move the designated Floating Fish Trap sector allocation in to the general category fishery as set forth in this part. The Division will consult with the Floating Fish Trap Licensees or their designee prior to enacting any allocation roll over, and will maintain written correspondence in the form of a letter on file as proof of said consultation.

12.5 Special Striped Bass Quota – Floating Fish Trap Net:

12.5.1: Floating fish trap operators must be permitted pursuant to RIGL §20-5-1, and abide by all conditions as specified in RIGL Chapter 20-5 and RIMFR Part XIV. Application shall be made to the DFW on forms prescribed by the Director.

12.5.2: During a single calendar year, ~~Rhode Island~~ **the** floating **fish** trap ~~net~~ ~~companies licensed and operating under~~ **Chapter** ~~20-2-26~~ shall be allowed to harvest and market **quota shall** not **be** more than thirty-nine percent (39%) of the annual Rhode Island commercial quota ~~established in Part 12.3.~~

12.5.3 - Minimum size: ~~These striped bass must be at least~~ Twenty-six inches (26”) in total length.

12.5.4 - Season: The Special Striped Bass Quota season will be open from April 1 through December 31.

12.5.5: When ~~Fish and Wildlife~~ **(DFW)** has determined that the annual quota allocated to floating fish traps has been reached, the ~~trap net harvest of striped bass~~

~~fishery will terminate. A notice terminating the fishery will be filed with the Secretary of State to be effective upon filing.~~

12.5.6: Reporting: All **floating fish** trap ~~net companies~~ **operators** shall keep daily records of striped bass landings. ~~Weekly summaries of daily landings shall be submitted to Fish and Wildlife. Floating Fish Trap operators will be required to~~ **and** report landings ~~of striped bass~~ to SAFIS every Monday, Wednesday, and Friday, of every week that the trap is in operation.

12.5.7: If the floating fish trap operators are found to be out of compliance with the reporting regulations as ~~set forth above~~ **specified in section 12.5.5**, the operators will be notified, and ~~a notice will be filed with the Secretary of State's Office. (RIMF REGULATIONS) (Penalty - Part 3.3; RIGL 20-1-16).~~ If there is non-compliance with ~~the reporting requirements as set forth above~~, the Floating Fish Trap operators will default to **following** the program ~~as set forth below~~: ~~The following seasons are established for the commercial trap net fishery:~~

~~The following seasons are established for the commercial trap net fishery:~~

January 1—December 31	One hundred percent (100%) of the floating trap quota shall be available from January 1 through December 31. Once eighty percent (80%) of the seasonal allocation is projected to be harvested the possession limit shall be 500 pounds per fish trap licensee per calendar day.
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(a) ~~January 1~~ **April 1** – December 31: One hundred percent (100%) of the floating **fish** trap quota shall be available ~~from January 1 through December 31~~ **during this sub-period**. Once eighty percent (80%) of the seasonal allocation is projected to be harvested the possession limit shall be 500 pounds per **floating** fish trap licensee per calendar day.

12.6 Gill Net Prohibition for Striped Bass: No person shall take or possess any striped bass while gill netting, or while hauling a gill net ~~(RIMFC REGS) (Penalty—Part 3.3; RIGL 20-1-16)~~

12.7 Striped Bass 50-yard Closure Zone for Gill Nets: It shall be illegal to set, haul, or maintain a gill net within 50 yards of the Rhode Island coastline (mean high tide line) in the following areas and during the following seasons:

12.7.1 Areas: From Monahan's Dock breakwater (State Pier #5) to the southernmost tip of Matunuck Pt. (Carpenter's Bar); in Narragansett Bay, Mt. Hope Bay, and Sakonnet River (as described in Part 13.4-1), and from the southern tip of Sachuest Point to the juncture of Second Beach and Sachuest Point, and from the southwest corner on Price's Neck to Castle Hill Light House.

12.7.2 Season Closure: All gill netting is prohibited within 50 yards of the Rhode Island coastline (mean high water line) during the period October 15 - December 31 annually. ~~(RIMFC REGULATIONS) (Penalty – Part 3.3; RIGL 20-1-16)~~

12.8 Hybrid Striped Bass Cultured Striped Bass:

12.8.1: Aquaculture-reared striped bass or hybrid striped bass brought into Rhode Island for sale or resale, which is wholly or partially processed, except for cultured striped bass or hybrid Striped bass from a fish farm or processor which are a fully processed and packaged product whether fresh or frozen, shall have affixed to it a tag identifying it as an aquaculture product.

12.8.2: Packages and containers containing aquaculture products shall be tagged or labeled with a uniform series of 14 digit numbers and letters as shown in the example below:

MD = State of origin
123 = Permit number (producing state issued permit number)
0889 = Month and year of shipment
A1234 = Species ID and number of product

12.8.3: Each fish or fish product shall have affixed to it a tag bearing the same information listed in ~~(2)~~ **section 12.8.2.**

12.8.4: The sale of this product shall be accompanied by a receipt showing the : (a) date of sale; (b) name, address, and permit number of the aquaculture facility; (c) numbers and species of Striped bass sold; (d) name of purchaser.

12.8.5: Fish shipped in the round and filleted by the seller, shall have the tag removed and wrapped in with the fillets when sold.

12.8.6: The consignee of each subsequent sale shall retain a copy of the bill of lading or similar accountable document for 1 year, and make it available to the Department upon request. ~~(RIMFC REGULATIONS) (Penalty – Part 3.3; RIGL 20-1-16)~~

~~**12.412.9 Commercial Striped Bass Tags:** Each individual fish **Striped bass** shall be immediately marked with tags supplied by **Fish and Wildlife (DFW)**. No Striped bass may be sold unless it has been properly identified with **a special such** tag **provided by Fish and Wildlife**. **Fish and Wildlife (DFW)** may designate tagging agents as appropriate. All designated tagging agents shall keep and maintain the required forms and logs specified by **Fish and Wildlife (DFW)**. ~~(RIMFC REGULATIONS) (Penalty – Part 3.3; RIGL 20-1-16)~~~~

12.10 VIOLATIONS FOR NON-COMPLIANCE: If the DFW and/or the Chief of the Division of Law Enforcement determine that there has been non-compliance with the provisions of these regulations or the permit agreement, the owner and/or operator of the permitted vessel shall be advised of such determination and the specific grounds therefore in writing by delivery of same by certified mail or by personal service upon the owner or operator in compliance with the requirements

set out in Rule 4 of the Rhode Island Superior Court Rules of Civil Procedure. The determination shall specifically include notice that an opportunity for an impartial hearing is available before the Administrative Adjudication Division pursuant to R.I. Gen. Laws Chapter 42-17.7 relative to either or both the finding that sufficient evidence exists of non-compliance with the provisions of these regulations or the permit agreement as well as the termination of the permit and or the imposition of a penalty pursuant to RIGL 20-1-16.

12.11 PENALTIES

12.11.1 Judicially imposed penalty for violations: Unless otherwise specifically provided, the violation of any law or rule or regulation relating to wild animals, wild birds, lobsters and fish, marine, freshwater and anadromous fisheries and shellfisheries shall be a misdemeanor, punishable by a fine of not more than five hundred dollars (\$500) or imprisonment for up to ninety (90) days, or both (RIGL §20-1-16)

12.11.2 Additionally, a person may be subject to the imposition of a administrative penalty pursuant to DEM's "Rules and Regulations Governing the Suspension/Revocation of Commercial Marine Fisheries, Shellfish Buyer, Lobster Dealer, Finfish Dealer, and Multi-purpose Dealer, licenses issued pursuant to Title 20 of RIGL "Fish and Wildlife".

12.12 APPEALS

12.12.1 Denial of a license or permit: Persons denied a license or permit may request an appeal as provided by RIGL Chapter 42-17.7 and pursuant to DEM's "Administrative Rules of Practice and Procedure for the Administrative Adjudication Division for Environmental Matters"

12.12.2 Enforcement Action: Any person affected by a decision of the Director for an enforcement action pursuant to these regulations may file and appeal in accordance with RIGL Chapter 42-17.7 and DEM's Administrative Rules of Practice and Procedure for the Administrative Adjudication Division for Environmental Matters.

Rule ~~87~~. EFFECTIVE DATE

The foregoing rules and regulations "Rhode Island Marine ~~Fisheries Statutes and~~ Regulations, Part XII, Striped Bass", after due notice, are hereby adopted and filed with the Secretary of State this ~~22nd day of March, 2013~~ (insert new date) to become effective 20 days from filing, unless otherwise indicated, in accordance with the provisions of Title 20, Chapters 42-17.1, 42-17.6, and 42-17.7, and in

accordance with Chapter 42-35-18(b)(5), Administrative Procedures Act of the Rhode Island General Laws of 1956, as amended.

Janet L. Coit
Director, Department of Environmental Management

Notice Given: ~~01/18/2013~~ 02/21/2014

Public Hearing: ~~02/19/2013~~ 03/25/2014

Filing date: ~~03/22/2013~~

Effective date: ~~04/11/2013~~

ERLID#: ~~7210~~