RHODE ISLAND
DEPARTMENT OF ENVIRONMENTAL MANAGEMENT

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. Proposed changes to the General Category Commercial Scup Management Plan
2. Proposed changes to the Recreational Black Sea Bass Management Plan;
3. Adoption of regulations governing the Commercial taking of Skates;
4. Proposed changes to the regulations governing the taking of Conch/Whelk;
5. Proposed Regulations Implementing the RI Recreational Saltwater Fishing License (6.12); and
6. Proposed Vessel-Based Regulations (6.13)

The public hearing will commence at 6:00 PM on Monday, April 18, 2011 in the University of Rhode Island Graduate School of Oceanography, Corless Auditorium, South Ferry Road, Narragansett, RI 02882. The hearing room is handicap accessible. A taped record of the hearing will be made and the DEM will provide interpreter services for the hearing impaired, provided such services are requested at least 48 hours prior to the hearing date. A request for this service can be made in writing or by calling (401) 222-6800 or TDD (401) 831-5508. Written comments concerning the regulations proposed for promulgation by the DEM may also be submitted to the Division of Fish and Wildlife, 3 Fort Wetherill Road, Jamestown, RI 02835 no later than 12:00 PM on April 18, 2011.

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 March 18 through April 18, 2011 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 address:
http://www.dem.ri.gov/topics/mftopics.htm

Janet Coit, Director
Department of Environmental Management

Date Posted: 3/18/2011

DEM/DFW April 18, 2011 Public Hearing
Table of Public Hearing Items Included in
Part VII - Minimum Sizes of Fish/Shellfish

Public Hearing Item #1 - Proposed changes to the General Category Commercial Scup Management Plan: (Section 7.11.2, Page 37)

Public Hearing Item #2 - Proposed changes to the Recreational Black Sea Bass Management Plan: (Section 7.14.2, Page 47- 48)

Public Hearing Item #3 – Adoption of regulations governing the Commercial taking of Skate: (Section 7.25, Page 62)

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 VII
Minimum Sizes of Fish/Shellfish

Annotated 3/15/2011
Sections 7.11.2, 7.14.2, 7.25

~~**December 10, 2010**~~

AUTHORITY: These regulations are adopted pursuant to Chapters 42-17.1, 42-17.6, 20-4 through 20-10, and sections 20-1-2, and 20-1-4, in accordance with Chapter 42-35 of the Rhode Island General Laws of 1956, as amended.

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 manage the marine resources of Rhode Island.

AUTHORITY

These rules and regulations are promulgated pursuant to Chapter 42.17.1, 42-17.6, 20-4 through 20-10 and Sections 20-1-2, and 20-1-4, in accordance with Chapter 42-35-18(b)(5), Administrative Procedures, of the General Laws of 1956, as amended.

ADMINISTRATIVE FINDINGS

These administrative rules and regulations are based upon the need to modify existing regulations.

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 VII** 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.

PART VII – MINIMUM SIZES OF FISH/SHELLFISH

7.1 (Repealed 8/2010)

7.2 (Repealed 8/2010)

7.3 **(Repealed 8/2010)**

7.4 **(Repealed 8/2010)**

7.5 Striped Bass – Except as provided for in 12.3 and 12.5 no person, firm, or corporation shall possess any striped bass measuring less than twenty-eight (28) inches total length, whether caught within the jurisdiction of this State or otherwise. (RIMFC REGULATIONS) [Penalty – Part 12.2; (RIGL 20-4-11)]

Minimum sizes, other species – Except as specifically noted, no person shall possess or take any of the following species which are less than the following minimum size

AMERICAN PLAICE (DAB): Commercial and Recreational 14"

ATLANTIC STURGEON: Commercial and Recreational – no possession

EEL: Commercial and Recreational – 6"

HADDOCK: Commercial and Recreational – 19"

POLLOCK: Commercial and Recreational – 19"

SCUP: Commercial – 9" and Recreational -10 ½". Floating trap fishermen may possess undersize scup provided they are not sold, bartered, traded, and exchanged, but following culling, are taken to sea and released back into the water.

WEAKFISH (SQUETEAGUE): Commercial and Recreational 16"

WITCH FLOUNDER (GRAY SOLE): Commercial and Recreational 14"

YELLOWTAIL FLOUNDER: Commercial and Recreational 13"

All minimum sizes for the above listed fish shall be measured as total length (from tip of snout to tip of tail).
(RIMFC REGULATION) [Penalty – Part 3.3; (RIGL 20-3-3)]

7.7 Summer Flounder (Fluke) – No person commercially licensed under RIGL Chapters 20-2.1 or 20-4 shall possess or harvest any summer flounder which is less than fourteen (14) inches total length. A total annual statewide quota for summer flounder will be established. It shall be the most recent allocation established for the State by the Atlantic States Marine Fisheries Commission

(ASMFC) and/or the Secretary of the U.S. Dept. of Commerce and published in the Federal Register. The quota may be harvested by gear fishermen licensed in accordance with the provisions of Title 20 of the General Laws and in accordance with all rules and regulations promulgated by the Department of Environmental Management. In order to provide for the orderly harvest of the quota, and to allow for the implementation of a one-year research program involving sector allocation, the State's summer flounder quota for 2009 will be managed as follows:

a. **A portion of the quota will be set aside for research purposes – namely, a one-year sector allocation pilot program for 2009, administered in accordance with the terms and conditions set forth in sub-section 7.7.11 herein; and**

b. **The remaining portion of the quota will be made available for harvest by all fishermen holding valid and applicable commercial fishing licenses and/or landing permits, and who are not participating in the sector allocation pilot program, in accordance with the sub-period schedules, allocations, and possession limits set forth below.**

7.7.1 Summer flounder Sub-periods and Possession Limits

7.7.1-1 Winter Sub-Period: January 1 – April 30 annually.
Target allocation – 54% of the annual quota established in Section 7.7, unless modified pursuant to this part. It shall be unlawful to possess or land from a vessel, in any one calendar day, more than 300 pounds, or the poundage as provided in this part, of summer flounder during the period from January 1 until the Sunday of the first full week in February. The DFW may adjust the possession limit during the sub-period based on the current catch rate and advice from fishing industry representatives and the Rhode Island Marine Fisheries Council.

a. **Any vessel which possesses a valid federal summer flounder moratorium permit if harvesting summer flounder from federal waters and possesses a valid state of Rhode Island summer flounder exemption certificate; or, if harvesting exclusively in State waters, any vessel whose operator possesses a valid license to harvest or land summer flounder for commercial purposes in Rhode Island and possesses a valid state of Rhode Island summer flounder exemption certificate, may opt to apply to obtain a permit from the Division of Fish and Wildlife in the aggregate landing program for summer flounder during the Winter I period beginning on the Sunday of the first full week in February until the Winter I period ends or until the program is terminated as provided in this part. The name of any applicant vessel deemed to satisfy the**

requirements for enrollment in the program shall be maintained on a list to be kept by DEM Division of Fish and Wildlife and DEM Division of Law Enforcement and is thereby authorized to land summer flounder in any amount between 0 and 3,000 pounds in any calendar week period so long as the total landed by that vessel does not exceed 3,000 pounds in any calendar week period. It shall be unlawful for the cumulative landings to exceed the weekly trip limit. The calendar week period shall begin on Sunday at 12:00 AM and ends on the following Saturday at 11:59 PM. When 90% of the Winter I summer flounder quota has been harvested as determined by the Division of Fish and Wildlife (Division), the program will terminate and the possession limit per vessel shall be 300 pounds per calendar day. The DFW may adjust the aggregate program possession limit during the sub-period based on the current catch rate and advice from fishing industry representatives and the Rhode Island Marine Fisheries Council. Any modifications made by the Division of Fish and Wildlife to the possession limit as set forth above will be promulgated in Part III, section 3.2.1-3.

b. During the aggregate program period as defined above, the commercial possession limit of summer flounder for vessels that are not permitted in the aggregate landing program shall be 500 pounds per calendar day for vessels which possess a valid state of Rhode Island Summer Flounder Exemption Certificate. When 90% of the Winter I summer flounder quota has been harvested as determined by the Division of Fish and Wildlife (Division), the possession limit per vessel shall be 300 pounds per calendar day. It shall be unlawful for any person operating a vessel that is not permitted to participate in the aggregate landing program to land more than the poundage of summer flounder, as specified above, in Rhode Island during any calendar day commencing at 12:00 AM and ending at 11:59 PM of that same day. Any modifications made by the Division of Fish and Wildlife to the possession limit as set forth above will be promulgated in Part III, section 3.2.1-3.

c. The possession limit for vessels which do not possess a RI Summer Flounder Exemption Certificate is 200 pounds per day.

d. An applicant vessel shall be considered eligible for a permit to participate in the aggregate landing program for summer flounder by demonstrating to the satisfaction of the Division of Fish and Wildlife and the Division of Law Enforcement that it satisfies each of the following criteria:

(1) The vessel if harvesting summer flounder from federal waters possesses a valid federal summer flounder moratorium permit and possesses a valid state of Rhode Island summer flounder exemption certificate, or, if harvesting exclusively in State waters, the vessel's operator possesses a valid license to harvest or land summer flounder for commercial purposes in Rhode Island and possesses a valid state of Rhode Island summer flounder exemption certificate;

(2) The vessel shall be operated by a person who possesses a valid multipurpose, principal effort, or landing license issued by the State of Rhode Island to land summer flounder for commercial purposes; and

(3) The vessel shall be operated by a licensed person who has not been assessed a criminal or administrative penalty in the past three years for a violation of Part 7.7 Fluke (Summer Flounder) et al. and/or Part 7.11 Scup Regulation et al. or more than one marine fisheries violation

e. The operator of the applicant vessel shall strictly adhere to each of the following requirements:

(1) The subject vessel shall be permitted from the date the participant enters the program until the end of the Winter I sub period or until the participant terminates enrollment by providing written notice of the termination from the program, whichever first occurs. Said termination shall take effect no earlier than the Saturday following the receipt of the written notice by the Division.

(2) A vessel may commence the application process for obtaining a permit to participate in the program by downloading the application from DEMs website, or may obtain one directly from the Division of Fish and Wildlife (401-423-1927) on Mondays and Tuesdays, from 8:30 AM until 4:00 PM during the entire Winter I sub period. The application must be filled out in its entirety and returned to the Division of Fish and Wildlife (3 Fort Wetherill Rd Jamestown, RI 02835). The application will be reviewed by the Division of Fish and Wildlife and the Division of Law Enforcement and upon acceptance, a permit will be issued to the applicant vessel to take effect the first Sunday after the permit is received.

(3) No vessel shall possess simultaneously more than one aggregate landing program permit.

(4) Repealed (12/2010)

(5) The information recorded by the SAFIS reporting system shall be documented by the Division of Fish and Wildlife and the Division of Law Enforcement for use in accounting for the amount of summer flounder landed by a specific vessel during a calendar week.

(6) The State's copy of the Vessel Trip Report logbook or the reporting form provided by the Division of Fish and Wildlife shall be kept in numerical order on board the vessel and furnished upon request, including the name and address of the dealer where the summer flounder were landed. The vessel must have all reports dating back to January 1st on board the vessel.

f. Non-compliance with the provisions of these regulations or the permit agreement shall subject both the owner and the operator to revocation of enrollment and participation in the commercial fisheries for the subsequent Winter I fishery. If for any reason a Winter I fishery does not exist by regulation, the privilege of the owner(s) and operator(s) to commercially harvest fish shall be suspended for the same calendar time period as described in the current Winter I period upon adjudication.

Additionally, the owner(s) and operator(s) shall be subject to the imposition of a penalty pursuant to Part 3.3 (RIGL 20-3-3) and the 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".

g. If the Chief of the Division of Fish and Wildlife 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 Part 3.3 (RIGL 20-3-3) as well as the ineligibility to reapply for a permit for the subject vessel for the remainder of the Winter I period.

(1) Any person who feels aggrieved such a determination may seek an adjudicatory hearing in order to contest an enforcement action which alleges violation(s) of these rules and regulations must file said request in writing with the clerk of Administrative Adjudication Division, 235 Promenade Street, Providence, Rhode Island 02908 within twenty (20) calendar days of receipt of the contested agency enforcement action.

(2) Any person who seeks an adjudicatory hearing relative to a determination to deny an applicant vessel a permit in the aggregate landing program for summer flounder must file said request in writing with the clerk of Administrative Adjudication Division, 235 Promenade Street, Providence, Rhode Island 02908 within thirty (30) calendar days of receipt of the contested agency action.

(3) The written request for hearing pursuant to Rule 8(a) or 8(b) must be received by with the clerk of Administrative Adjudication Division, 235 Promenade Street, Providence, Rhode Island 02908 with the time period indicated.

<u>h</u> Any applicant who is permitted for the winter 1 aggregate program as set forth above will not be allowed to participate in the summer aggregate program within the same year.

7.7.1-1.1 Repealed (12/2010)

<u>7.7.1-2</u> <u>Summer Sub-Period</u>: May 1 – October 31 annually. Target allocation – 35% of the annual quota established in Section 7.7, unless modified pursuant to this part. The possession limit per vessel will be 100 pounds per calendar day. Any modifications made by the

Division of Fish and Wildlife to the possession limit as set forth above will be promulgated in Part III, section 3.2.1-3.

<u>Beginning June 1</u>, in each calendar week it will be prohibited to commercially possess, sell, or land summer flounder during the two-day period beginning at 12:00 AM on Friday and ending at 11:59 PM on Saturday.

a. <u>Beginning June 1</u> any vessel which possesses a valid federal summer flounder moratorium permit if harvesting summer flounder from federal waters and possesses a valid state of Rhode Island summer flounder exemption certificate; or, if harvesting exclusively in State waters, any vessel whose operator possesses a valid license to harvest or land summer flounder for commercial purposes in Rhode Island and possesses a valid state of Rhode Island summer flounder exemption certificate, may opt to apply to obtain a permit from the Division of Fish and Wildlife for the aggregate landing program for summer flounder during the Summer sub period until the program is terminated as provided in this part. The name of any applicant vessel deemed to satisfy the requirements for enrollment in the program shall be maintained on a list to be kept by DEM Division of Fish and Wildlife and DEM Division of Law Enforcement and is thereby authorized to land summer flounder in any amount between 0 and 500 pounds in any calendar week period so long as the total landed by that vessel does not exceed 500 pounds in any calendar week period. It shall be unlawful for the cumulative landings to exceed the weekly trip limit. The calendar week period shall begin on Sunday at 12:00 AM and ends on the following Thursday at 11:59 PM. When 80% of the Summer sub period summer flounder quota has been harvested as determined by the Division of Fish and Wildlife (Division) the program will terminate and the possession limit per vessel shall be 100 pounds per calendar day. The DFW may adjust the aggregate program possession limit during the sub-period based on the current catch rate and advice from fishing industry representatives and the Rhode Island Marine Fisheries Council. Any modifications made by the Division of Fish and Wildlife to the possession limit as set forth above will be promulgated in Part III, section 3.2.1-3.

b. The commercial possession limit of summer flounder for vessels that are not permitted in the aggregate landing program shall be 100 pounds per calendar day. It shall be unlawful for any person operating a vessel that is not permitted to participate in the summer aggregate landing program to land more than the poundage of summer flounder, as specified above, in Rhode Island during any

calendar day commencing at 12:00 AM and ending at 11:59 PM of that same day. Any modifications made by the Division of Fish and Wildlife to the possession limit as set forth above will be promulgated in Part III, section 3.2.1-3.

c. The possession limit for vessels which do not possess a RI Summer Flounder Exemption Certificate is 100 pounds per day.

d. An applicant vessel shall be considered eligible for a permit to participate in the summer aggregate landing program for summer flounder by demonstrating to the satisfaction of the Division of Fish and Wildlife and the Division of Law Enforcement that it satisfies each of the following criteria:

(1) The vessel if harvesting summer flounder from federal waters possesses a valid federal summer flounder moratorium permit and possesses a valid state of Rhode Island summer flounder exemption certificate, or, if harvesting exclusively in State waters, the vessel's operator possesses a valid license to harvest or land summer flounder for commercial purposes in Rhode Island and possesses a valid state of Rhode Island summer flounder exemption certificate;

(2) The vessel shall be operated by a person who possesses a valid multipurpose, principal effort, or landing license issued by the State of Rhode Island to land summer flounder for commercial purposes; and

(3) The vessel shall be operated by a licensed person who has not been assessed a criminal or administrative penalty in the past year for a violation of Part 7.7 Fluke (Summer Flounder) et al. or more than one marine fisheries violation

e. The operator of the applicant vessel shall strictly adhere to each of the following requirements:

(1) The subject vessel shall be permitted from the date the participant enters the program until the end of the Summer sub period or until the participant terminates enrollment by providing written notice of the termination from the program, whichever first occurs. Said termination shall take effect no earlier than the Sunday

following the receipt of the written notice by the Division.

(2) A vessel may commence the application process for obtaining a permit to participate in the program by downloading the application from DEMs website, or may obtain one directly from the Division of Fish and Wildlife (401-423-1927) on Mondays and Tuesdays, from 8:30 AM until 4:00 PM during the entire Summer sub period. The application must be filled out in its entirety and returned to the Division of Fish and Wildlife (3 Fort Wetherill Rd Jamestown, RI 02835). The application will be reviewed by the Division of Fish and Wildlife and the Division of Law Enforcement and upon acceptance, a permit will be issued to the applicant vessel to take effect the first Sunday after the permit is received.

(3) No vessel shall possess simultaneously more than one aggregate landing program permit.

(4) Repealed (12/2010)

(5) The information recorded by the SAFIS reporting system shall be documented by the Division of Fish and Wildlife and the Division of Law Enforcement for use in accounting for the amount of summer flounder landed by a specific vessel during a calendar week.

(6) The State's copy of the Vessel Trip Report logbook or the reporting form provided by the Division of Fish and Wildlife shall be kept in numerical order on board the vessel and furnished upon request, including the name and address of the dealer where the summer flounder were landed. The vessel must have all reports dating back to January 1st on board the vessel.

f. Non-compliance with the provisions of these regulations or the permit agreement shall subject both the owner and the operator to revocation of enrollment and participation in the commercial fisheries for the subsequent Summer sub period fishery. If for any reason a Summer sub period fishery does not exist by regulation, the privilege of the owner(s) and operator(s) to commercially harvest fish shall be suspended for the same calendar time period as described in the current Summer sub period upon adjudication.

Additionally, the owner(s) and operator(s) shall be subject to the imposition of a penalty pursuant to Part 3.3 (RIGL 20-3-3) and the 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".

g. If the Chief of the Division of Fish and Wildlife 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 Part 3.3 (RIGL 20-3-3) as well as the ineligibility to reapply for a permit for the subject vessel for the remainder of the Summer sub period.

(1) Any person who feels aggrieved such a determination may seek an adjudicatory hearing in order to contest an enforcement action which alleges violation(s) of these rules and regulations must file said request in writing with the clerk of Administrative Adjudication Division, 235 Promenade Street, Providence, Rhode Island 02908 within twenty (20) calendar days of receipt of the contested agency enforcement action.

(2) Any person who seeks an adjudicatory hearing relative to a determination to deny an applicant vessel a permit in the aggregate landing program for summer flounder must file said request in writing with the clerk of Administrative Adjudication Division, 235 Promenade Street, Providence, Rhode Island 02908 within thirty (30) calendar days of receipt of the contested agency action.

(3) The written request for hearing pursuant to Rule 8(a) or 8(b) must

be received by with the clerk of Administrative Adjudication Division, 235 Promenade Street, Providence, Rhode Island 02908 with the time period indicated.

h. Any applicant who was permitted for the winter 1 aggregate program as set forth above will not be allowed to participate in the summer aggregate landing program within the same year.

7.7.1-4 Fall Sub-Period: November 1 – December 31 annually. Target allocation – 11% of the annual quota established in Section 7.7, unless modified pursuant to this part. The possession limit per vessel will be 600 pounds per calendar day. Any modifications made by the Division of Fish and Wildlife to the possession limit as set forth above will be promulgated in Part III, section 3.2.1-3.

7.7.1-5 Any unused portion of the quota from a 'sub-period' will be equally distributed to the allocations of the remaining sub-periods. The over-harvest of a sub-period allocation will be deducted from the allocations of the remaining sub-periods. Annually, the target allocations specified in sections 7.7.1-1 through 7.7.1- 4 shall be adjusted by the DFW to charge over-harvest of a sub-period allocation during a given year to the same sub-period of the next following year.

7.7.2 Summer flounder Trip Limits (possession limit)

7.7.2-1 Repealed (5/11/01)

7.7.2-2 The possession limit may vary from the amount specified in sections 7.7.1-1 through 7.7.1- 4. Fish and Wildlife, after discussions with fishing industry representatives, will determine, based upon the period of time remaining in the quota period and the current catch rate, whether the quota will be reached prior to the end of the sub-period. Having determined the catch rate and time remaining in the sub-period, Fish and Wildlife will decide whether the possession limit should be decreased or increased. Fish and Wildlife will file a notice with the Secretary of State's Office if the possession limit is changed, and electronically notify the public utilizing the marine fisheries informational Listserve.

7.7.3 Summer flounder Mesh Regulations – Otter trawlers that land or possess 100 pounds (45.4 kg) or more of summer flounder from May 1 through October 31; or 200 pounds (90.8 kg) or more of summer flounder per trip from November 1 through April 30, must fish with nets or combinations of nets that have a minimum mesh size of 5.5 inch (14.0 cm) diamond, or 6 inch (15.2 cm) square mesh applied throughout the body, extension(s) and

codend portion of the net.

7.7.4 Summer flounder Recreational Regulations

7.7.4-1 Size and Possession – No person fishing recreationally shall possess a summer flounder less than nineteen and one-half inches (19.5") total length, and no person fishing recreationally shall possess, per calendar day, more than six (6) summer flounder whether caught within the jurisdiction of this state or otherwise. Compliance with the possession limit aboard vessels will be determined by dividing the number of fish on a vessel by the number of recreational fishermen onboard said vessel.

7.7.4-2 Season – The recreational season for summer flounder in Rhode Island waters is open from May 1 through December 31.

7.7.5 Summer flounder Dealer/Shipping/Transfer/Reporting Regulations/Penalty –

7.7.5-1 Prohibition on the transfer of Summer flounder – No Summer flounder (*Paralichthys dentatus*), may be purchased, bartered, or sold within the State of Rhode Island unless marked, processed, shipped, labeled, and handled in accordance with the following rules:

a. All persons are prohibited from transferring or attempting to transfer at sea summer flounder from one vessel to another vessel, and the licensed person in charge of the vessel may only transfer summer flounder to dealers who possess a valid Rhode Island Dealer's License.
b. No licensed person in charge of the vessel may land summer flounder after 8:00 PM or prior to 6:00 AM. The legal hours for landing summer flounder are from 6:00 AM to 8:00 PM only.
c. Repealed 01/01/09
d. All summer flounder must be weighed prior to the removal of the summer flounder from the dealer's premises or from the point of transfer.
e. The weight scales must be certified in accordance with Rhode Island law RIGL, Chapter 47-1.
f. All summer flounder may only be shipped out of state in standard 60 or 100 pound cartons (containers) unless specific prior written authorization is requested and received from the Rhode Island Office of Law Enforcement, 83 Park St., Providence, RI 02903.
g. Dealers must comply with the reporting requirements as set forth in section 19.14 of the RI Marine Fisheries Regulations

License Suspension:

a. **In addition to the penalty prescribed in RIGL 20-1-16, the license of any person who refuses or neglects to make the report required herein will be suspended by the Director. The license of any person who knowingly or willfully makes a false report or violates any provision of these regulations may be suspended for a period not to exceed one year.**
b. **The Director has determined that non-compliance with these regulations seriously threatens the proper management of the available stock of summer flounder and, thus, the general welfare as represented that it is appropriate to suspend the license of alleged violators pending formal suspension or revocation hearing arising from the alleged violation.**

No person shall take, sell, or possess within this state any summer flounder which have not been taken in compliance with the provisions of this regulation. Any summer flounder which the Director shall have reasonable cause to believe have not been taken in compliance with the provisions of RIGL Title 20 and the regulations adopted in accordance therewith shall be confiscated and sold by the Department of Environmental Management.

(RIMFC REGULATION) [Penalty – Part 3.3; (RIGL 20-3-3)]

7.7.6 Moratorium on the Landing of Summer Flounder – No person shall possess, land, sell, or offer for sale in excess of two hundred (200) pounds of summer flounder *Paralichthys dentatus*, in any calendar day, in the State of Rhode Island or the jurisdictional waters of the state without a summer flounder exemption certificate issued by Fish and Wildlife and a valid Rhode Island commercial fishing license. Application for a summer flounder exemption permit must be received by Fish and Wildlife prior to January 1, 1997. Provided, however, that the two hundred (200) pound daily limit shall be waived, during the 2010 calendar year, for any vessel whose owner does not have a summer flounder exemption certificate but has been authorized for participation by the Director in an approved summer flounder sector allocation pilot program, conducted pursuant to section 7.7.11.

7.7.7 Exemption Certificates – Fish and Wildlife will issue an exemption certificate for a vessel if the owner of the vessel or his/her representative applies to Fish and Wildlife prior to January 1, 1997, for the issuance of such a certificate and demonstrates to the satisfaction of the Director that:

7.7.7-1 the operator of the vessel possesses a valid Rhode Island commercial fishing license to land summer flounder up to the amount permitted by the Rhode Island Marine Fisheries Council regulations; and

7.7.7-2 the subject vessel meets any of the following criteria:

a. the vessel was operated by a person who possessed a valid Rhode

Island commercial fishing license and landed and sold in excess of one pound of summer flounder to a Rhode Island licensed dealer during the period from January 1, 1987, through December 31, 1992; or

b. the vessel fished exclusively in the Exclusive Economic Zone (EEZ) and landed and sold in excess of one pound of summer flounder to a licensed Rhode Island licensed dealer sometime during the period January 1, 1987, through December 31, 1992. The Department may require additional supporting documents including but not limited to the ship's logs, ice and fuel slips; or

c. the vessel replaces a vessel which was operated by a person who possessed a valid Rhode Island commercial fishing license, and the vessel being replaced landed and sold in excess of one pound of summer flounder to a Rhode Island licensed dealer during the period from January 1, 1987, through December 31, 1992, and if the vessel being replaced was lost by sinking or was otherwise destroyed, the replaced vessel is required to have been owned by the applicant at the time of the loss; or

d. the vessel replaces a vessel which fished exclusively in the EEZ and landed and sold in excess of one pound of summer flounder to a Rhode Island licensed dealer, during the period January 1, 1987, through December 31, 1992, and if the vessel being replaced was lost by sinking or was otherwise destroyed, the replaced vessel is required to have been owned by the applicant at the time of the loss.

e. If the vessel is replacing a vessel that was lost by sinking or was otherwise destroyed, documentation must be presented from a licensed insurance company, U.S. Coast Guard report, or some other valid evidence of ownership to the satisfaction of the Director.

7.7.8 Application for Certificate of Exemption – A vessel is eligible to receive a Rhode Island Summer Flounder Exemption Certificate if it meets the following conditions. The applicant applying for an exemption certificate shall:

7.7.8-1 provide Fish and Wildlife with a copy of the operator's valid current Rhode Island commercial fishing license or non-resident landing license, and Federal Fluke Permit if the summer flounder is to be taken in the Exclusive Economic Zone (EEZ); and

7.7.8-2 submit a completed notarized application for said certificate; and

7.7.8-3 submit proof that the vessel meets the requirements set out in 7.7.7 and

7.7.8-4 provide a completed notarized waiver authorizing the Department to access records verifying that this vessel and operator meet the criteria set forth in 7.7.7; and

7.7.8-5 provide Fish and wildlife with a copy of the vessel's U.S. Coast Guard documentation papers or state issued boat registration certificate proving ownership of the vessel.

7.7.9 Submission of Application – Application for an exemption certificate shall be mailed or submitted prior to January 1, 1997 to the office of Fish and Wildlife at: Oliver Stedman Government Center, 4808 Tower Hill Rd., Wakefield, RI 02879, Attention: Fluke Exemption.

7.7.10 Transfer of Rhode Island Summer Flounder Certificate of Exemption –

Any Certificate of Exemption issued by the Division is only valid for the vessel to which it is issued. A vessel may be sold with all certificates, permits (state and federal) and history transferred together or without the certificates, permits (state and federal) and history for purposes of replacing the vessel. In instances when a vessel owner retains all certificates, permits, and history they must be applied to a replacement vessel owned by said individual within ninety (90) days.

(a) Change in ownership: A Certificate of Exemption is presumed to transfer with the vessel whenever it is bought, sold, or otherwise transferred, unless there is a written agreement, signed by the transferor/seller and transferee/buyer, or other credible written evidence, verifying that the transferor/seller is retaining the vessel's fishing and permit history for purposes of replacing the vessel. Individuals who purchase a vessel issued a Certificate of Exemption must supply credible written evidence verifying that they are the full owner of said vessel. Vessel ownership will be determined solely by an issued and valid (unexpired) US Coast Guard documentation or state registration.

(b) Replacement Vessels: A vessel owner wishing to transfer a Certificate of Exemption issued by the Division must apply to the Division for approval and provide to the satisfaction of the Division of Fish and Wildlife proof that the applicant vessel is replacing a

vessel which has been removed from the Summer Flounder Exemption Program (as described in 7.7.6)

(1) The vessel owner must supply credible written evidence verifying that the transferor/seller is retaining the vessel's Certificate of Exemption for purposes of replacing the vessel. If a vessel owner elects to sever the Certificate of Exemption from a vessel, the Certificate of Exemption may be transferred only to another vessel fully owned by said vessel owner. Proof of full ownership of both vessels is required. Vessel ownership will be determined solely by an issued and valid (unexpired) US Coast Guard documentation or state registration.

(2) Vessel permits (state and federal), Certificates of Exemption, and fishing history cannot be split.

(3) Certificates of Exemption may not be combined to create larger replacements vessels.

(4) The replacement vessel may not exceed a 10 percent increase in length overall (LOA), a 10 percent increase in gross registered tonnage (GRT) or net tonnage (NT), or a 20 percent increase in horsepower of the vessel's baseline specifications, as applicable.

(5) Vessel baseline specifications: The vessel baseline specifications in this section are the respective specifications (length, gross registered tonnage, net tonnage, horsepower) of the vessel that was initially issued a Certificate of Exemption.

A vessel may be upgraded, whether through refitting or replacement, and be eligible to retain a Certificate of Exemption, only if the upgrade complies with the following:

i. The vessel's horsepower may be increased only once, whether through refitting or replacement. Such an increase may not exceed 20 percent of the horsepower of the vessel's baseline specifications, as applicable.

ii. The vessel's length, GRT, and NT may be increased only once, whether through refitting or replacement. Any increase in any of these three specifications of vessel size may not exceed 10 percent of the vessel's baseline specifications, as applicable. If any of these three specifications is increased, any increase in the other two must be performed at the same time. This type of upgrade may be done separately from an engine horsepower upgrade.

(c) Certificates of Exemption or permits may not be:

(1) pledged, mortgaged, leased, or encumbered in any way;

(2) transferred with any retained right of repossession or foreclosure, or any condition requiring a subsequent transfer; or

(3) attached, distrained, or sold on execution of judgment.

(RIMF REGULATION) [Penalty – Part 3.3; (RIGL 20-3-3)]

7.7.11 Research Set Aside

A portion of the State's summer flounder quota for 2011 will be allocated to a continuation of the sector allocation pilot program that began in 2009. The 2011 program, will continue to allow participation by all vessels, including those that do not have federal permits or RI summer flounder exemption certificates. The purpose of the program is to continue to assess the effectiveness and viability of a catch-share approach as an alternative to traditional quota management in the commercial summer flounder fishery. The Department will continue to undertake the assessment by carefully monitoring the program throughout the course of 2011, evaluating the short-term and potential long-term impacts of the program, including the impacts to non-participating licensed fishermen and prospective future license holders, and determining the extent to which the program meets the goals, principles and standards for marine fisheries management in Rhode Island, as set forth in the RI General Laws. The Department will provide weekly public updates of all landings made pursuant to the program; provide updates on the program to the RI Marine Fisheries Council at all Council meetings throughout 2011; report preliminary assessment findings to the Council at the first regularly scheduled Council meeting after October 1, 2011; and issue a final report to the Council at the first regularly scheduled Council meeting after February 1, 2012 or earlier if possible.

Participants in the program will be authorized to commercially harvest and land summer flounder in Rhode Island in any amount, up to the amount of the research set aside and the sector allocation(s) established pursuant thereto, at any time of the year, until the research set aside and the sector allocation(s) established pursuant thereto are fully harvested; provided, however, that a total allowable catch limit will be established for a portion of the summer sub-period, i.e., from May 1 through September 15) (see subsection 7.7.11-5(h)). Participants will not be bound by daily or weekly possession limits, nor will participants be bound by sub-period closures. Participants will be prohibited from discarding any summer flounder, or parts thereof, that are fourteen (14) inches or greater in total length, unless

damaged and unsellable, while engaged in the program. Participants will also be required to meet all other terms and conditions of the program, as set forth below.

The research set aside will involve an aggregate allocation for each approved sector. Each allocation will involve a "hard" total allowable catch (TAC), i.e., a specific and definitive amount of summer flounder, constituting the maximum aggregate amount of summer flounder that may be harvested by the participants in each sector. Any discards of sub-legal-sized fish, or damaged and unsellable legal-sized fish, will be deducted from the TAC.

The program may involve one or more qualified sectors, and each sector may involve any number of qualified participants; provided that the number of participants in each sector shall be greater than three (3). If no sector becomes qualified for participation in the pilot program, there will no research set aside for 2011.

All applications for recognition of a sector must be submitted no later than January 31, 2011.

7.7.11-1 Participants

Anyone may be deemed eligible to participate in the pilot program, provided they meet the following requirements:

a. The principal participant must be the owner of a qualified vessel. To be qualified, a vessel must be either:

(1) licensed to commercially harvest summer flounder in federal waters and be operated by the holder of a RI license or landing permit allowing for the commercial harvest and/or landing of summer flounder in RI; or

(2) operated by the holder of a RI license allowing for the commercial harvest and landing of summer flounder in RI.

In addition, a qualified vessel must have verifiable history of commercial landings of summer flounder in Rhode Island during some or all of the five-year period 2004-2008,

b. Secondary participants shall include any licensed vessel operators working on behalf of principal participants.

c. A participant must not have been assessed a criminal or administrative penalty in the past three years for a violation of any state or federal law or

regulation relating to marine fisheries.

d. Participants must be formally organized as a sector, and each sector must meet all of the requirements set forth below.

e. Participation in any sector shall not be approved for any more than one vessel that is owed by the same owner.

<u>7.7.11-2</u> <u>Sectors</u>

Any group of three or more eligible participants may form a sector and apply for participation in the pilot program, provided the following requirements are met:

a. Each prospective sector must submit a Proposal to the Division, describing the group's intent relative to participation in the pilot program.

b. Each prospective sector must submit a fully executed Sector Contract to the Division. The Sector Contract must be signed by all participants, and must bind them to the terms and conditions of the Operations Plan. The Contract must hold the Sector and all participants in the sector jointly and severally liable for any violations of applicable State or Federal fishery laws and regulations for which any participant of that Sector has been found culpable by a duly authorized governmental entity.

c. Each prospective sector must submit an Operations Plan to the Division. The Operations Plan must contain at least the following elements:

1. A roster of all qualified vessels, vessel owners, federal permit numbers (if applicable), licensed vessel operators, and any other parties who will participate in the sector. The roster shall include all verifiable data on the commercial landings of summer flounder in RI for each vessel, during the five-year period 2004-2008, as well as any relevant information pertaining to the license and/or permit histories of the participants.

2. An acceptable plan detailing the rules the sector participants will agree to abide by in order to avoid exceeding the sector allocation (TAC), including detailed plans for enforcement of the Sector rules, as well as detailed plans for the monitoring and reporting of landings and discards. If applicable, the plan must describe whether the sector allocation will be sub-allocated to individual participants and, if so, in what amounts or percentages.

3. The name of, and contact information for, the Sector Manager, who will act as a designated agent for service of process and serve as overseer of the day-to-day operations of the sector.

7.7.11-3 Approval of Pilot Program Sectors by the Director

a. Evaluation criteria -- All proposals submitted to the Division will be reviewed and assessed by the Director in accordance with the following evaluation criteria:

1. Completeness – Does the proposal include a full description of the group's intent relative to participation in the pilot program? Does the proposal include a fully executed Sector Contract that comports with sub-section 7.7.11-2(b)? Does the proposal include an Operations Plan that meets all of the requirements set forth in sub-section 7.7.11-2(c)?

2. Accuracy – Are the landings data, and any relevant information pertaining to license/permit histories, provided in the proposal verifiable, consistent with data sources accessible by the Department and accurate?

3. Enforcement history – Have there been any criminal or administrative penalties assessed within the past three years on any participant associated with the proposal?

4. Landings History – For how long, and in what amounts, have the proposed participants commercially landed summer flounder in Rhode Island?

5. Clarity and strength – Is the Operations Plan well developed and likely to provide for strong and effective management and control of the sector and its operations?

6. Fishery management goals – Is the proposal likely to contribute substantively and meaningfully to reductions in bycatch mortality, improved economic efficiency, sustainability, and safety at sea? Is the proposal likely to furnish quality data, information, and insight that will enable the Department to (i) assess the effectiveness and viability of a catch-share approach as an alternative to traditional quota management in the commercial summer flounder fishery, and (ii) determine the extent to which a sector-allocation program meets the goals, principles and standards for marine fisheries management in Rhode Island, as set forth in the RI General Laws?

7. Broad-based applicability and benefit – Is the proposal likely to

furnish data, information, and insight that can be applied beneficially to other Rhode Island-based fishers, fisheries, and gear types in future years?

b. Final decision – Based on the Director's review of proposals undertaken pursuant to subsection (a) above, the Director shall select one or more sectors for participation in the pilot program. The selection will be announced publicly as soon as it is made, and the announcement shall include the names of all participating vessels, vessel owners, and license/permit holders, and the allocation (TAC) assigned to the sector(s). If the Director finds that no sector is qualified for participation in the pilot program, there will be no pilot program for 2011.

<u>Determination of Sector Allocations and Research Set Aside</u>

The Director will calculate the amount of the individual sector allocations as follows:

For each approved sector, the Director will sum the total commercial landings of summer flounder in Rhode Island for each and all participating vessels during each and all of the five years, 2004-2008 for the period January 1 through December 31, and label it "total sector catch." The Director will then determine the total commercial landings of summer flounder in Rhode Island by all commercial fishermen over the same 2004-2008 period, from January 1 through December 31, and label it "total state catch." The Director will then divide the total sector catch by the total state catch to derive a final fractional share, reflecting the portion of the state summer flounder catch harvested by the participating vessels over the five-year period, 2004-2008 from January 1 through December 31.

Final adjusted sector allocations for pilot program: For each approved sector, the final adjusted allocation for the pilot program will be determined by applying the final fractional share for the sector to the State's overall summer flounder quota for 2011, and then subtracting from that amount the total amount of summer flounder landed commercially by the sector participants from January 1, 2011 until the date of the Director's final decision per sub-section 7.7.11-3(b).

The Director will calculate the amount of the research set aside as follows:

If more than one sector is approved for the pilot program, the final adjusted sector allocations for each approved sector will be added. The sum total will constitute the amount of the research set aside for 2011. If only one sector is approved for the pilot program, the final adjusted sector allocation for that sector will constitute the amount of the research set

aside for 2011.

<u>7.7.11-5</u> <u>Program Implementation – Terms and Conditions</u>

a. All sectors must utilize detailed tracking sheets, with single-vessel resolution, in a format pre-approved by the Division, to account for all landings and discards by all sector participants throughout the course of the program. Each sector manager shall be responsible for maintaining these records and providing them to the Division in a form and manner prescribed by the Division on a weekly basis throughout the year; on or before each Thursday, the complete weekly record of each participating vessel shall be filed with the Division for the preceding Sunday through Saturday period. Each sector manager shall notify the Division no later than forty-eight (48) hours after seventy-five percent (75%) of the sector allocation has been harvested, and then again no later than forty-eight (48) hours after ninety percent (90%) of the sector allocation has been harvested. All trip monitoring and reporting costs shall be borne by each sector, through the sector manager.

b. All sectors must allow the Department to publicly disclose all landings and discards of summer flounder made by all participating vessels, on a single-vessel resolution basis.

c. All participating vessels must agree to take any state or federally authorized observers at any time. Each sector, through the sector manager(s), must fund the full costs of any and all observer coverage requested or required by the Division or the National Marine Fisheries Service.

d. All participating vessels must notify the DEM's Division of Law Enforcement (401-222-2284 or 222-3070) at least one hour prior, but not more than six hours prior, to all commercial landings in Rhode Island, regardless of whether or not such landings include summer flounder.

e. All legal-sized summer flounder harvested during any and all sector-related fishing operations must be retained, landed, and counted against the sector allocation. All summer flounder discarded due to damage rendering the fish unsellable or sub-legal size must also be counted against each sector allocation.

f. On the first of every month through April 1, the Division shall tally the total poundage of summer flounder discards reported by the sector participants and apply the net poundage from the preceding month to the remaining winter I sub-period quota for the general category commercial summer flounder fishery. If the sub-period has closed at the time of the

tally, the net poundage shall be applied to the summer sub-period quota. On the first of every month beginning May 1 and continuing through October 1, the Division shall tally the total poundage of summer flounder discards reported by the sector participants and apply the net poundage from the preceding month to the remaining summer I sub-period quota for the general category commercial summer flounder fishery. If the sub-period has closed at the time of the tally, the net poundage shall be applied to the winter II sub-period quota. On November 1 and December 1, the Division shall tally the total poundage of summer flounder discards reported by the sector participants and apply the net poundage from each preceding month to the remaining winter II sub-period quota for the general category commercial summer flounder fishery.

g. No vessel participating in the program shall fish commercially with gear that is designed to catch summer flounder, between June 1, and September 30, within one mile seaward of the southern Rhode Island coastline. This baseline is further defined as the shoreline running from Watch Hill to Point Judith, the mouth of Narragansett Bay running from Point Judith to Brenton Point, the south shore of Aquidneck Island, the mouth of the Sakonnet River running from Sachuest Point to Sakonnet Point, and the south shore of Little Compton to the Massachusetts state line.

h. A total allowable catch (TAC) limit will be established for the summer sub-period, beginning May 1 and continuing through September 15. The summer sub-period TAC shall be calculated as follows:

For each vessel participating in each sector, a summer sub-period allocation of 10,800 pounds is established. For each sector, the summer sub-period TAC shall be 10,800 pounds multiplied by the number of vessels participating in the sector.

i. Once a sector's allocation is met, sector operations will be terminated for the remainder of the year, and no vessel participating in the program, nor any licensed individual associated with such vessel, shall fish commercially with gear that is designed to catch summer flounder for the remainder of the year.

j. Once a sector's summer sub-period TAC is met, sector operations will be terminated for the remainder of the open portion of the summer sub-period, per subsection (h) above, and no vessel participating in the program, nor any licensed individual associated with such vessel, shall fish commercially with gear that is designed to catch summer flounder for the remainder of the open portion of the summer sub-period, per subsection (h) above.

k. Participating vessels must remain in the sector and abide by the terms and conditions of the sector throughout 2011. Any vessel that drops out of, or is expelled from, a sector will be prohibited from harvesting and landing summer flounder for the duration of 2011. The sector manager shall notify the Division no later than forty-eight (48) hours after any vessel drops out of, or is expelled from, a sector.

l. All license/permit holders and vessels participating in the sector allocation pilot program must adhere to all applicable rules and regulations governing commercial fishing operations, other than those set forth in section 7.7.1, including but not limited to mesh size restrictions, offloading hours, at-sea transfers, and reporting and record-keeping requirements. All license/permit holders and participating vessels will be subject to all State and Federal small mesh landing levels for summer flounder when fishing with small mesh. All license/permit holders and participating vessels will be allowed to fish south of the Southern New England DAS counting area for summer flounder when properly enrolled in the Small Mesh Exemption Program.

m. The authorization to participate in the pilot program is non-transferable. Only vessels authorized by the Director may participate in the pilot program during 2011.

n. It shall be the responsibility of each sector manager to oversee the day-to-day operations of the sector, ensure compliance with all of the terms and conditions governing the sector, as set forth in these rules and regulations, and as detailed in the Sector Contract and Sector Operations Plan, and to serve as the primary point of contact with the Division.

<u>Enforcement</u>

If a sector exceeds its allocation, or if one or more participating vessels is found to be in violation of any of the terms and conditions set forth in these regulations, the sector will be declared null and void due to breach of contract and all participating vessels and license/permit holders will be subject to potential enforcement action, including but not limited to: confiscation of catch, prohibition on the harvest and landing of summer flounder for the remainder of the year, license and/or permit suspension or revocation, fines, and disqualification from participation in any future alternative management programs. All penalty provisions applicable to violations of marine fisheries laws and regulations will also be applicable to participants in the sector allocation pilot program.

7.7.12 Control Date

A control date of December 31, 2010 is established for the commercial summer flounder fishery in Rhode Island.

7.8 Winter Flounder (Blackback)

7.8.1 Winter Flounder – Recreational Regulations

7.8.1-1 Legal Minimum Size – No person fishing recreationally shall take, possess, sell, possess for sale, or offer for sale any winter flounder measuring less than twelve (12) inches total length whether caught within the jurisdiction of this State or otherwise.

7.8.1-2 Recreational Seasons, Possession Limits, and Closed Areas –

(a) **Beginning on the fourth Saturday in April and continuing for 30 days, and beginning on the last Saturday in September and continuing for 30 days, fishermen may take and possess not more than two (2) winter flounder per person per calendar day in Rhode Island waters, except in Narragansett Bay north of the Colregs line, where the harvest or possession of winter flounder is prohibited.**

7.8.2 Winter Flounder – Mesh Regulations/Commercial Fishing Gear – The minimum mesh size for bottom trawl nets is six (6) inch diamond mesh or six and one half (6.5) inch square mesh applied throughout the body and extension of the net, or any combination thereof, and six and one half (6.5) inch diamond mesh or six and one half (6.5) inch square mesh applied to the codend of the bottom trawl nets as defined in paragraphs (a) and (b) of this section. The minimum mesh size for gill nets is six and one half (6.5) inch diamond mesh or six and one half (6.5) inch square mesh applied throughout the net. Vessels may utilize commercial fishing gear with mesh smaller than the sizes referenced in this section provided they do not possess any winter flounder.

(a) For vessels greater than 45 ft in length overall, a diamond mesh codend is defined as the first 50 meshes counting from the terminus of the net, and a square mesh codend is defined as the first 100 bars counting from the terminus of the net

(b) For vessels 45 ft or less in length overall, a diamond mesh codend is defined as the first 25 meshes counting from the terminus of the net, and a square mesh codend is defined as the first 50 bars counting from the terminus of the net.

7.8.2-1 Net obstruction or constriction

A fishing vessel subject to minimum mesh size restrictions shall not use any device or material, including, but not limited to, nets, net strengtheners, ropes, lines, or chafing gear, on the top of a trawl net, except that one splitting strap and one bull rope (if present), consisting of line and rope no more than 3 in (7.6 cm) in diameter, may be used if such splitting strap and/or bull rope does not constrict, in any manner, the top of the trawl net. "The top of the trawl net" means the 50 percent of the net that (in a hypothetical situation) would not be in contact with the ocean bottom during a tow if the net were laid flat on the ocean floor. For the purpose of this paragraph, head ropes are not considered part of the top of the trawl net.

7.8.3 Winter Flounder – Commercial Regulations

7.8.3-1 Legal Minimum Size – No person fishing commercially shall take, possess, sell, possess for sale, or offer for sale any winter flounder measuring less than twelve (12) inches total length whether caught within the jurisdiction of this State or otherwise.

7.8.3-2 Commercial Seasons, Possession Limits, and Closed Areas --

(a) January 1 – December 31: It shall be unlawful to possess aboard or land from a vessel, in any one calendar day, more than 50 pounds of winter flounder.

(b) Harvest or possession of winter flounder in Narragansett Bay north of the Colregs line is prohibited.

(c) It is illegal for a trawl vessel to initiate trawling in Narragansett Bay north of the Colregs line and haul back south of the Colregs line and possess winter flounder.

(d) Vessels fishing south of the Colregs line or in the Exclusive Economic Zone (EEZ) may traverse closed portions of Rhode Island waters for the purpose of landing winter flounder provided they are not fishing and nets are stowed in accordance with Section 10.10 of these regulations.

(e) Unless otherwise specified in this section, any modifications made by the Division of Fish and Wildlife to the commercial possession limit as set forth above will be promulgated in Part III, section 3.2.1-3.

7.8.4 With the exception of gillnets and fyke nets, fishing for winter flounder in waters north of the seaward entrance to all coastal salt ponds, including the area north of the seaward entrances to the Harbor of Refuge, the waters of Narrow River, and the waters of Little Narragansett Bay north of a line from Napatree Point to the western end of Sandy Point, including the waters

of the Pawcatuck River,-will be prohibited from one hour after sunset until one hour before sunrise. Gillnets and fyke nets may not be hauled from one hour after sunset to one hour before sunrise.

(RIMFC REGULATION) [Penalty – Part 3.3; (RIGL 20-3-3)]

7.9 Tautog (Blackfish) – No person shall take, possess, sell, possess for sale, or offer for sale any tautog measuring less than sixteen (16) inches total length whether caught within the jurisdiction of this State or otherwise.

7.9.1-1 Recreational – No person may possess more than three (3) tautog from April 15 through May 31. The tautog fishery will be closed from June 1 through June 30. No person may possess more than three (3) tautog from July 1 through the Friday before the third Saturday in October. No person may possess more than six (6) tautog from the third Saturday in October through December 15. While the fishery is open the possession limit shall be per person as stated above or a maximum of ten (10) fish per vessel, whichever amount is less.

7.9.1-2 Licensed Party and Charter Boats – No licensed party/charter boat may possess more than three (3) tautog per person from April 15 through May 31. The tautog fishery will be closed from June 1 through June 30. No licensed party/charter boat may possess more than one (1) tautog per person from July 1 through the Friday before the third Saturday in October. No licensed party/charter boat may possess more than eight (8) tautog per person from the third Saturday in October through November 30. No licensed party/charter boat may possess more than one (1) tautog per person from December 1 through December 15. Compliance aboard licensed party/charter boats will be determined by dividing the number of fish onboard the boat by the number of recreational fishermen onboard the boat. Licensed party/charter boats are not subject to the ten (10) fish per vessel restriction that applies to the rest of the recreational fishery. Any licensed party/charter boat participating in the tautog fishery must report each trip targeting tautog into the eREC logbook (the electronic logbook hosted by ACCSP).

Commercial –The total allowable harvest of tautog will be established annually, and will be that amount allocated to the State of Rhode Island by the Regional Fishery Management Council and/or the Atlantic States Marine Fisheries Commission. The quota may be harvested only by permitted gear types and licensed fishermen in accordance with all rules and regulations promulgated by the DEM and the RIGL Title 20. The quota shall only be available during the following seasons:

(a) April 15 – May 31: 1/3 of the annual quota established in this part shall be available from April 15 through May 31, unless modified pursuant to this

part. It shall be unlawful to possess aboard or land from a vessel, in any one calendar day, more than ten (10) tautog during this period. The aggregate number of tautog on any vessel, regardless of how many licensed fishermen are onboard, may not exceed the ten (10) fish limit per day.

(b) <u>July 15 – August 29</u>: 1/3 of the annual quota established in this part shall be available from July 15 – August 29, unless modified pursuant to this part. It shall be unlawful to possess aboard or land from a vessel, in any one calendar day, more than ten (10) tautog during this period. The aggregate number of tautog on any vessel, regardless of how many licensed fishermen are onboard, may not exceed the ten (10) fish limit per day.

(c) <u>October 15 – December 31</u>: 1/3 of the annual quota established in this part shall be available from October 15 – December 31, unless modified pursuant to this part. It shall be unlawful to possess aboard or land from a vessel, in any one calendar day, more than ten (10) tautog during this period. The aggregate number of tautog on any vessel, regardless of how many licensed fishermen are onboard, may not exceed the ten (10) fish limit per day.

(d) Within each period the allocation may be harvested until it is exhausted. Any unused quota not harvested during a sub-period will be carried forward into the next period, unless an overage has occurred in a previous sub period during the same calendar year, and any over-harvest will be deducted equally from all periods in the next calendar year. No licensed commercial fishermen may possess more than ten (10) tautog in any calendar day. During a closure of the R.I. tautog fishery a federally permitted vessel fishing in the Exclusive Economic Zone (EEZ), may traverse Rhode Island waters for the purpose of landing tautog in another state, provided their nets are stowed in accordance with Section 10.10 of these regulations.

<u>7.9.3</u> <u>Possession Limits for Charter and Party Boats</u> – Compliance aboard vessels will be determined by dividing the number of fish on board a vessel by the number of recreational fishermen on board said vessel. Said fish shall not be offered for sale. Party and charter boats may obtain a State permit by showing proof of a U.S. Coast Guard License to conduct their fishery within the territorial waters of Rhode Island.

<u>7.9.4</u> <u>Reporting requirements</u>. – Dealers must comply with the reporting requirements as set forth in section 19.14 of the RI Marine Fisheries Regulations

7.9.5 Closure of commercial fisheries managed under a federally mandated quota or allocation system. – Any landing of a marine species managed under a quota or allocation system, or the taking or possession of any marine species, may be prohibited by the Director for a specified portion of the calendar year upon the finding by the Director that ninety percent (90%) or more of the annual quota is about to be harvested, and upon submission of a notice of closure to the Office of Secretary of State, and publication of the closure notice in a daily newspaper of statewide circulation. Further, it is the responsibility of the licensed person in charge of a vessel harvesting species regulated in this section to call the DEM hotline for current harvesting and possession regulations.

(RIMFC REGULATION) [Penalty – Part 3.3; (RIGL 20-3-3)]

7.10 Bluefish – Possession limit for recreational fishermen – No person shall possess more than fifteen (15) bluefish unless he/she has a permit meeting the requirements of RIGL 20-2-26, 20-2-26.1, 20-2-27, 20-2-28, 20-2-28.1. Compliance onboard vessels will be determined by dividing the number of fish onboard a vessel by the number of recreational fishermen onboard said vessel.

7.10.1 Bluefish – Commercial Quota -- A total allowable harvest of bluefish will be established annually, and shall be that amount allocated to the State of Rhode Island by the Regional Fishery Management Councils and/or the Atlantic States Marine Fisheries Commission. The quota may be harvested only by permitted gear types and licensed fishermen in accordance with all rules and regulations promulgated by the Department of Environmental Management. To provide for the orderly harvest of the quota, the Department of Environmental Management has established the following sub-period allocations.

7.10.2 Bluefish Commercial Quota – Sub-Periods

7.10.2-1 Spring sub-period – January 1 through June 30 annually. Quota – 50% of the annual allocation.

7.10.2-2 Summer-Fall Sub Period – July 1 through December 31 annually. Quota – 50% of the annual allocation.

When 50% of any seasonal sub-period quota is reached, Fish and Wildlife will determine if a possession limit of between 200 – 10,000 pounds should be established depending upon the time remaining in the quota period and the current catch rate. Fish and Wildlife will file a notice with the Secretary of State's office if a possession limit is established, and will publish a news release announcing the change. The possession limit may be modified by Fish and Wildlife providing such notification is made.

7.10.3 Bluefish – Reporting Requirement – Dealers must comply with the reporting requirements as set forth in section 19.14 of the RI Marine Fisheries Regulations

(RIMFC REGULATION) [Penalty – Part 3.3; (RIGL 20-3-3)]

7.11 Scup Regulations – Minimum Size – 9" total length (TL) – It is unlawful for any person commercially licensed under RIGL 20-2-27 or RIMFC Part II, to land or possess any scup, or parts thereof, that do not meet this size limit. *[see Part 10.12 for gear roller regs]* (RIMFC REGULATION) [Penalty – Part 3.3 (RIGL 20-3-3) (RIGL 20-6-29)]

7.11.1 – Scup – Commercial Quota – A total allowable harvest of scup will be established annually, and shall be that amount allocated to the State of Rhode Island by the Regional Fishery Management Councils and/or the Atlantic States Marine Fisheries Commission. The quota may be harvested only by permitted gear types and licensed fishermen in accordance with all rules and regulations promulgated by the Department of Environmental Management. To provide for the orderly harvest of the quota, the Department of Environmental Management has established the following sub-period allocations.

Scup Commercial Quota – Sub-Periods

7.11.2-1 Winter Period I (January-April) –

a. Any vessel which possesses a valid federal scup moratorium permit if harvesting scup from federal waters; or, if harvesting exclusively in State waters, any vessel whose operator possesses a valid license to harvest or land scup for commercial purposes in Rhode Island may land scup in any amount between 0 and 30,000 pounds in any calendar week period so long as the total landed by that vessel does not exceed 30,000 pounds in any calendar week period beginning on January 1 and running through April 30 or until the program is terminated as provided in this part. It shall be unlawful for the cumulative landings to exceed the weekly trip limit. The calendar week period shall begin on Sunday at 12:00 AM and ends on Saturday at 11:59 PM. On April 30 or when 80% of the Winter I scup quota has been harvested as determined by the National Marine Fisheries Service (NMFS), whichever first occurs, the program will terminate and the possession limit per vessel will be 1,000 pounds per calendar day. Any modifications made by the Division of Fish and Wildlife to the possession limit as set forth above will be promulgated in Part III, section 3.2.1-3.

7.11.2-1.1 (Repealed 12.2010)

<u>Winter Period II (November- December</u>) – possession and landing limit is 2,000 pounds, decreasing to 500 pounds once 70% of the period quota is landed. Any modifications made by the Division of Fish and Wildlife to the possession limit as set forth above will be promulgated in Part III, section 3.2.1-3.

<u>Summer-Fall Period (May – October)</u> A state quota for scup will be established annually for the Summer-Fall period and shall be the most recent amount allocated to the State of Rhode Island by the Atlantic States Marine Fisheries Commission and/or the Secretary of the U.S. Department of Commerce and published in the Federal Register. The total scup quota for will be divided as follows:

<u>FLOATING TRAPS</u> – licensed by the state of Rhode Island – Sixty percent (60%) of the Summer-Fall period quota will be allocated to the floating trap harvesting sector.

During those years in which the Winter I federal coastwide scup quota allocation is completely exhausted prior to April 15, the floating fish trap quota will be available on April 15. During those years in which the Winter I federal coastwide scup quota allocation is not completely exhausted prior to April 15, the floating fish trap quota will be available on May 1.

Floating Fish Trap Licensees* will be required to report landings of scup to SAFIS every Monday, Wednesday, and Friday, of every week that the trap is in operation.

If the Division estimates that the Floating Fish Trap sector will not fully utilize its allocation prior to the end of the sub period, beginning on <u>June 15,</u> 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.

If there is noncompliance with the reporting requirements as set forth above, the Floating Fish Trap Licensees* will default to the program as set forth below:

<u>APRIL 15 – October 31</u>: During those years in which the Winter I federal coastwide scup quota allocation is completely exhausted prior to April 15,

the floating fish trap quota will be available on April 15. The possession limit will be 25,000 pounds per floating fish trap licensee* per calendar day. Once ninety percent (90%) of the sub-period allocation is projected to be harvested, the possession limit will be 5,000 pounds per fish trap licensee per calendar day until one hundred percent (100%) of the quota has been harvested. Any modifications made by the Division of Fish and Wildlife to the possession limit as set forth above will be promulgated in Part III, section 3.2.1-3.

<u>MAY 1 – OCTOBER 31</u>: During those years in which the Winter I federal coastwide scup quota allocation is not completely exhausted prior to April 15, the floating fish trap quota will be available on May 1. The possession limit will be 25,000 pounds per floating fish trap licensee* per calendar day. Once ninety percent (90%) of the sub-period allocation is projected to be harvested, the possession limit will be 5,000 pounds per fish trap licensee per calendar day until one hundred percent (100%) of the quota has been harvested. Any modifications made by the Division of Fish and Wildlife to the possession limit as set forth above will be promulgated in Part III, section 3.2.1-3.

If the Floating Fish Trap Licensees* are found to be out of compliance with the reporting regulations as set forth above, the Licensees will be notified and a notice will be filed with the Secretary of States Office.

"<u>Floating Fish trap licensee</u>" – for purposes of this section, fish trap licensee shall refer to a resident person or resident corporation currently issued a license pursuant to RI General Laws §20-5-2. The maximum possession limit per fish trap licensee shall be the amount set forth above regardless of the number of authorized trap locations, the number of vessels or the number of licensed fishermen who may be working for or may enter into contract with the fish trap licensee. While engaged in the operation of a fish trap, any licensed fisherman that may be working for or may enter into contract with the fish trap licensee waives any individual right to possess scup pursuant to a possession limit set out in RIMF Regulations Part 7.11.2-2.

Dealers must comply with the reporting requirements as set forth in section 19.14 of the RI Marine Fisheries Regulations

<u>General Category scup fishery (gear types other than floating fish traps)</u> – Forty percent (40%) of the Summer- Fall period quota will be allocated to all gear types except floating fish traps. The quota allocated to the General Category sector will be available during the following sub-periods.

<u>Spring Sub Period</u>: One-third (1/3) of the General Category quota will be

available during the Spring Sub Period, defined as May 1 until the first Sunday in July. The possession limit will be reduced at the discretion of the Division. The fishery will close once the entire period allocation is projected to be harvested.

Item #1 – Proposed changes to the General Category Commercial Scup Management Plan

Option 1: Status Quo – May sub period between 0-1,000 lbs per week
July sub period between 0-700 lbs per week
September sub period between 0-700 lbs per week

Option 2: May sub period between 0-1,500 lbs per week
July sub period between 0-1,000 lbs per week
September sub period between 0-1,000 lbs per week

Option 3: May sub period between 0-2,000 lbs per week
July sub period between 0-1,500 lbs per week
September sub period between 0-1,500 lbs per week

a. **Beginning May 1 any vessel authorized to land scup for commercial purposes in Rhode Island is authorized to land scup in any amount between 0 and 1,000 pounds in any calendar week period during the Spring Sub Period so long as the total landed by that vessel does not exceed 1,000 pounds in any calendar week period. The calendar week period shall begin on Sunday at 12:00 AM and ends on the following Saturday at 11:59 PM. When the Spring Sub Period scup quota has been harvested as determined by the Division of Fish and Wildlife (Division) the fishery will close. The fishery will restart on the first Sunday in July, and will be administered as set forth in this part. The Division may adjust the possession limit during the Spring Sub Period based on the current catch rate and advice from fishing industry representatives and the Rhode Island Marine Fisheries Council. Any modifications made by the Division of Fish and Wildlife to the possession limit as set forth above will be promulgated in Part III, section 3.2.1-3**

b. **The information recorded by the SAFIS reporting system shall be documented by the Division of Fish and Wildlife and the Division of Law Enforcement for use in accounting for the amount of scup landed by a specific vessel during a calendar week.**

c. **The State's copy of the Vessel Trip Report logbook or the reporting form provided by the Division of Fish and Wildlife shall be kept in numerical**

order on board the vessel and furnished upon request, including the name and address of the dealer where the scup were landed. The vessel must have all reports dating back to May 1st on board the vessel.

d. Non-compliance with the provisions of these regulations shall subject both the owner and the operator to revocation of participation in the commercial fisheries for the subsequent Spring Sub Period fishery. If for any reason a Spring Sub Period fishery does not exist by regulation, the privilege of the owner(s) and operator(s) to commercially harvest fish shall be suspended for the same calendar time period as described in the current Spring Sub Period upon adjudication.

Additionally, the owner(s) and operator(s) shall be subject to the imposition of a penalty pursuant to Part 3.3 (RIGL 20-3-3) and the 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".

e. If the Chief of the Division of Fish and Wildlife and/or the Chief of the Division of Law Enforcement determine that there has been non-compliance with the provisions of these regulations the owner and/or operator of the 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 as well as the imposition of a penalty pursuant to Part 3.3 (RIGL 20-3-3).

(1) Any person who feels aggrieved such a determination may seek an adjudicatory hearing in order to contest an enforcement action which alleges violation(s) of these rules and regulations must file said request in writing with the clerk of Administrative Adjudication Division, 235 Promenade Street, Providence, Rhode Island 02908 within twenty (20) calendar days of receipt of the contested agency enforcement action.

(2) Any person who seeks an adjudicatory hearing must file said request

in writing with the clerk of Administrative Adjudication Division, 235 Promenade Street, Providence, Rhode Island 02908 within thirty (30) calendar days of receipt of the contested agency action.

(3) The written request for hearing pursuant to Rule 8(a) or 8(b) must be received by with the clerk of Administrative Adjudication Division, 235 Promenade Street, Providence, Rhode Island 02908 with the time period indicated.

<u>Summer Sub Period</u>: One-third (1/3) of the General Category quota will be available from the first Sunday in July until the third Sunday in September.

a. <u>Beginning the first Sunday in July</u> any vessel authorized to land scup for commercial purposes in Rhode Island is authorized to land scup in any amount between 0 and 700 pounds in any calendar week period during the Summer Sub Period so long as the total landed by that vessel does not exceed 700 pounds in any calendar week period. It shall be unlawful for the cumulative landings to exceed the weekly trip limit. The calendar week period shall begin on Sunday at 12:00 AM and ends on the following Saturday at 11:59 PM. When the Summer Sub Period scup quota has been harvested as determined by the Division the fishery will close. The fishery will restart on the third Sunday in September, and will be administered as set forth in this part. The Division may adjust the possession limit during the Summer Sub Period based on the current catch rate and advice from fishing industry representatives and the Rhode Island Marine Fisheries Council. Any modifications made by the Division of Fish and Wildlife to the possession limit as set forth above will be promulgated in Part III, section 3.2.1-3.

b. The information recorded by the SAFIS reporting system shall be documented by the Division of Fish and Wildlife and the Division of Law Enforcement for use in accounting for the amount of scup landed by a specific vessel during a calendar week.

c. The State's copy of the Vessel Trip Report logbook or the reporting form provided by the Division of Fish and Wildlife shall be kept in numerical order on board the vessel and furnished upon request, including the name and address of the dealer where the scup were landed. The vessel must have all reports dating back to May 1st on board the vessel.

d. Non-compliance with the provisions of these regulations shall subject both the owner and the operator to revocation of participation in the commercial fisheries for the subsequent Summer Sub Period fishery. If for any reason a Summer Sub Period fishery does not exist by regulation, the privilege of the owner(s) and operator(s) to commercially harvest fish shall be suspended for the same calendar time period as described in the current Summer Sub Period upon adjudication.

Additionally, the owner(s) and operator(s) shall be subject to the imposition of a penalty pursuant to Part 3.3 (RIGL 20-3-3) and the 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".

e. If the Chief of the Division of Fish and Wildlife and/or the Chief of the Division of Law Enforcement determine that there has been non-compliance with the provisions of these regulations the owner and/or operator of the 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 as well as the imposition of a penalty pursuant to Part 3.3 (RIGL 20-3-3).

(1) Any person who feels aggrieved such a determination may seek an adjudicatory hearing in order to contest an enforcement action which alleges violation(s) of these rules and regulations must file said request in writing with the clerk of Administrative Adjudication Division, 235 Promenade Street, Providence, Rhode Island 02908 within twenty (20) calendar days of receipt of the contested agency enforcement action.

(2) Any person who seeks an adjudicatory hearing must file said request in writing with the clerk of Administrative Adjudication Division, 235 Promenade Street, Providence, Rhode Island 02908 within thirty (30) calendar days of receipt of the contested agency action.

(3) The written request for hearing pursuant to Rule 8(a) or 8(b) must be received by with the clerk of Administrative Adjudication Division, 235 Promenade Street, Providence, Rhode Island 02908 with the time period indicated.

<u>Fall Sub Period</u>: One-third (1/3) of the General Category quota will be available from the third Sunday in September through October 31. The Division may increase the possession limit if they project the entire quota will not be harvested by the end of the sub-period. The DFW will have the discretion of adjusting trip limits upwards or downwards as necessary.

a. <u>Beginning the third Sunday in September</u> any vessel authorized to land scup for commercial purposes in Rhode Island is authorized to land scup in any amount between 0 and 700 pounds in any calendar week period during the Fall Sub Period so long as the total landed by that vessel does not exceed 700 pounds in any calendar week period. It shall be unlawful for the cumulative landings to exceed the weekly trip limit. The calendar week period shall begin on Sunday at 12:00 AM and ends on the following Saturday at 11:59 PM. When the Fall Sub Period scup quota has been harvested as determined by the Division of Fish and Wildlife (Division) the fishery will close. The fishery will restart at the beginning of the Winter 2 fishery as set forth in this part. The Division may adjust the possession limit during the Fall Sub Period based on the current catch rate and advice from fishing industry representatives and the Rhode Island Marine Fisheries Council. Any modifications made by the Division of Fish and Wildlife to the possession limit as set forth above will be promulgated in Part III, section 3.2.1-3.

b. The information recorded by the SAFIS reporting system shall be documented by the Division of Fish and Wildlife and the Division of Law Enforcement for use in accounting for the amount of scup landed by a specific vessel during a calendar week.

c. The State's copy of the Vessel Trip Report logbook or the reporting form provided by the Division of Fish and Wildlife shall be kept in numerical order on board the vessel and furnished upon request, including the name and address of the dealer where the scup were landed. The vessel must have all reports dating back to May 1st on board the vessel.

d. Non-compliance with the provisions of these regulations shall subject both the owner and the operator to revocation of participation in the

commercial fisheries for the subsequent Fall Sub Period fishery. If for any reason a Fall Sub Period fishery does not exist by regulation, the privilege of the owner(s) and operator(s) to commercially harvest fish shall be suspended for the same calendar time period as described in the current Fall Sub Period upon adjudication.

Additionally, the owner(s) and operator(s) shall be subject to the imposition of a penalty pursuant to Part 3.3 (RIGL 20-3-3) and the 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".

e. If the Chief of the Division of Fish and Wildlife and/or the Chief of the Division of Law Enforcement determine that there has been non-compliance with the provisions of these regulations the owner and/or operator of the 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 as well as the imposition of a penalty pursuant to Part 3.3 (RIGL 20-3-3).

(1) Any person who feels aggrieved such a determination may seek an adjudicatory hearing in order to contest an enforcement action which alleges violation(s) of these rules and regulations must file said request in writing with the clerk of Administrative Adjudication Division, 235 Promenade Street, Providence, Rhode Island 02908 within twenty (20) calendar days of receipt of the contested agency enforcement action.

(2) Any person who seeks an adjudicatory hearing must file said request in writing with the clerk of Administrative Adjudication Division, 235 Promenade Street, Providence, Rhode Island 02908 within thirty (30) calendar days of receipt of the contested agency action.

(3) The written request for hearing pursuant to Rule 8(a) or 8(b) must be received by with the clerk of Administrative Adjudication Division,

235 Promenade Street, Providence, Rhode Island 02908 with the time period indicated.

7.11.2-3 Possession Limit Adjustments – Fish and Wildlife, after discussions with fishing industry representatives, will determine, based upon the period of time remaining in the quota period and the current catch rate, whether the quota will be reached prior to the end of the sub-period. Having determined the catch rate and time remaining in the sub-period, Fish and Wildlife will decide whether the possession limit should be decreased or increased. Fish and Wildlife will file a notice with the Secretary of State's Office if the rate is changed and submit a listserve notice announcing the change. The rate may be modified by Fish and Wildlife upon providing such notification with the possession limit altered between a range of 0 – 10,000 pounds in possession.

7.11.3 Scup – Reporting Requirement – Dealers must comply with the reporting requirements as set forth in section 19.14 of the RI Marine Fisheries Regulations

7.11.4 Scup – Recreational

7.11.4-1 - No person fishing recreationally shall possess scup less than ten and one half inches (10.5") total length, and no person fishing recreationally shall possess, per calendar day, more than ten (10) scup, whether caught within the jurisdiction of this State or otherwise except as provided in section 7.11.4-3. Compliance with the possession limit aboard vessels will be determined by dividing the number of fish on board a vessel by the number of fishermen on board said vessel.

7.11.4-2 – The recreational season for scup in Rhode Island waters will be open from May 24 through September 26 annually.

7.11.4-3 – While fishing on a party or charter boat, no person shall possess scup less than eleven inches (11") total length, and no person fishing while on a party or charter boat shall possess, per calendar day, whether caught within the jurisdiction of this State or otherwise, more than ten (10) scup from June 8 through September 6, and more than forty (40) scup from September 7 through October 11.
Compliance with the possession limit aboard vessels will be determined by dividing the number of fish on board a vessel by the number of fishermen on board said vessel.

7.11.5 Scup – Scup Dealer/Shipping/Transfer/Reporting Regulations

<u>7.11.5-1</u> <u>Prohibition on the transfer of Scup</u> – No Scup, *Stenotomus chrysops,* may be purchased, bartered, or sold within the State of Rhode Island unless in compliance with the following:

A. All persons are prohibited from transferring or attempting to transfer scup from one vessel to another vessel while at sea. The licensed person in charge of the vessel may only transfer scup to a dealer licensed by the State of Rhode Island. Dealers are required to be licensed by the R.I. Department of Environmental Management (in compliance with RIGL 20-2-27 (d), or 20-2-28.1).

B. All scup must be weighed prior to the removal of the scup from the dealer's premises or from the point of transfer.

C. The weight scales must be certified in accordance with RIGL, Chapter 47-1.

D. Vessels are only allowed one trip limit in possession per calendar day. In addition, no person may land more than one trip limit in any calendar day. No person shall transport into the State of Rhode Island any scup which is not landed at a port located within the state unless the transaction of the first point of sale is in another state.

E. All dealers are required to record and report all transfers of scup in accordance with the following:

(1) Dealers shall maintain a written record on forms provided by the DFW, or dealer forms, of each scup transaction at their permanent place of business in Rhode Island, or with an authorized agent located in Rhode Island for inspection 8:00 AM – 4:00 PM during the course of normal daily business operations. Records must be available by 10:00 AM on the next business day following the date of landing. Records must be available at the dealer's or agent's Rhode Island office for a period of three years.

(2) The record must include: date of purchase, time of offloading, location of purchase, the vessel name, the name and license number of the Rhode Island license holder and the amount of scup transferred.

F. Dealers must comply with the reporting requirements as set forth in section 19.14 of the RI Marine Fisheries Regulations

<u>7.11.5-2</u> <u>License Suspension</u>

A. In addition to the penalty prescribed in RIGL 20-1-16, the license of any person who refuses or neglects to make the report required herein will be suspended by the Director. The license of any person who knowingly or willfully makes a false report or violates any provision of these regulations may be suspended for a period not to exceed one year.

The Director has determined that non-compliance with these regulations seriously threatens the proper management of the available stock of scup and thus the general welfare as represented that it is appropriate to suspend the license of alleged violators pending formal suspension or revocation hearing arising from the alleged violation.

C. No person shall take, sell, or possess within this state any scup which have not been taken in compliance with the provisions of this regulation. Any scup which the Director shall have reasonable cause to believe have not been taken in compliance with the provisions of RIGL Title 20 and the regulations adopted in accordance therewith shall be confiscated and sold by the Department of Environmental Management.

(RIMFC REGULATION) [Penalty – Part 3.3 (RIGL 20-3-3) (RIGL 20-6-29)]

<u>7.12</u> <u>Size, Possession, and Daily Limit Violations On Board Vessels</u> – In any instance, when there is a violation of the size, possession, or daily limit on board a vessel carrying more than one person when the catch is commingled, the violation shall be deemed to have been committed by the owner of the vessel, or the operator of the vessel, if the owner is not on board. (RIMFC REGULATION) [Penalty – Part 3.3 (RIGL 20-3-3) (RIGL 20-6-29)]

<u>7.13</u> <u>Atlantic Sturgeon – Moratorium on Harvest</u> – No harvest or possession of Atlantic Sturgeon will be permitted within the territorial waters of the State of Rhode Island until further notice. (RIMFC REGULATION) [Penalty – Part 3.3(RIGL 20-3-3) (RIGL 20-6-29)]

<u>7.14</u> <u>Black Sea Bass</u>

<u>7.14.1</u> <u>Commercial Harvest</u>

<u>7.14.1-1</u> <u>Legal Minimum Size</u> – No person fishing commercially shall take, possess, sell, possess for sale, or offer for sale any black sea bass measuring less than eleven (11) inches total length whether caught within the jurisdiction of this State or otherwise.

<u>Commercial Seasons and Possession Limits</u> -- A state quota for black sea bass will be established annually and shall be the most recent amount allocated to the State of Rhode Island by the Atlantic States Marine Fisheries Commission and/or the Secretary of the U.S. Department of Commerce as published in the Federal Register. The quota shall be available during the following seasons:

(a) <u>January 1 – April 30</u>: Twenty-five percent (25%) of the quota established in this part shall be available from January 1 through April 30. It shall be unlawful to possess aboard or land from a vessel, in any one calendar day, more than 750 pounds of black sea bass during this period. Any modifications made by the Division of Fish and Wildlife to the possession limit as set forth above will be promulgated in Part III, section 3.2.1-3

(b) <u>May 1 – June 30</u>: Twenty-five percent (25%) of the quota established in this part shall be available from May 1 through June 30. It shall be unlawful to possess aboard or land from a vessel, in any one calendar day, more than 50 pounds of black sea bass during this period. Any modifications made by the Division of Fish and Wildlife to the possession limit as set forth above will be promulgated in Part III, section 3.2.1-3

(c) <u>July 1 – October 31</u>: Thirty-nine (39%) of the quota established in this part shall be available from July 1 through October 31. It shall be unlawful to possess aboard or land from a vessel, in any one calendar day, more than 50 pounds of black sea bass during this period when open. The commercial black sea bass fishery will be closed from August 1 through August 31. Any modifications made by the Division of Fish and Wildlife to the possession limit as set forth above will be promulgated in Part III, section 3.2.1-3

(d) <u>November 1 – December 31</u>: Eleven percent (11%) of the quota established in this part shall be available from November 1 through December 31. It shall be unlawful to possess aboard or land from a vessel, in any one calendar day, more than 250 pounds of black sea bass during this period. Any modifications made by the Division of Fish and Wildlife to the possession limit as set forth above will be promulgated in Part III, section 3.2.1-3

(e) Any unused portion of the quota from a 'sub-period' will be equally distributed to the allocations of the remaining sub-periods. The over-harvest of a sub-period allocation will be deducted from the allocations

of the remaining sub-periods. Annually, the quota allocations specified in the above sections shall be adjusted by the DFW to charge over-harvest of a sub-period allocation during a given year to the same sub-period of the following year.

7.14.1-3 Current Commercial Possession Limit –
Unless otherwise specified in this section, any modifications made by the Division of Fish and Wildlife to the possession limit as set forth above will be promulgated in Part III, section 3.2.1-3.

7.14.1-4 Possession Limit Adjustments – The possession limits specified according to section 7.14.1-2 may be modified by the Division of Fish and Wildlife, who, after discussions with fishing industry representatives, will determine, based upon the period of time remaining in the quota period and the current catch rate, whether the quota will be reached prior to the end of the sub-period. Having determined the catch rate and time remaining in the sub-period, Fish and Wildlife will decide whether the possession limit should be decreased or increased. Fish and Wildlife will file a notice with the Secretary of State's Office if the possession limit is changed and publish a news release announcing the change. Fish and Wildlife may modify the possession limit upon providing such notification.

7.14.1- 5 Reporting Requirement – Dealers must comply with the reporting requirements as set forth in section 19.14 of the RI Marine Fisheries Regulations

(RIMFC REGULATION) [Penalty – Part 3.3 (RIGL 20-3-3) (RIGL 20-6-29)]

Recreational Harvest

Item #2 – Proposed changes to the Recreational Black Sea Bass Management Plan
An addendum to the ASMFC fishery management plan for black sea bass was sent out to public comment during February and March. RI's ASMFC public hearing was held on March 14, 2011. This addendum seeks to revisit the scale at which black sea bass is managed along the east coast for the recreational fishery.

The three main proposals are for:

Option 1. Status quo – a coastwide set of measures for recreational black sea bass leading to the following coastwide set of regulations: 25 fish bag, 13" minimum size, season open from July 1st through September 30th, closed October 1 through October 31st, and open November 1 through December 31st.

Option 2. State by state regulations – Depending on reference time period RI would have to reduce harvest between 37% and 65% in 2011.

Option 3. Regional – Depending on reference time period and the region chosen RI would have to reduce harvest between 37% and 58% in 2011.

Depending on the management program voted on and approved by the ASMFC black sea bass management board, RI would develop options accordingly. These options, if available, will be presented the evening of the public hearing in the slideshow presentation. As well the slideshow will be posted online (posted at http://www.dem.ri.gov/programs/bnatres/fishwild/041811.pdf when available) as soon as it has been developed and finalized.

7.14.2-1 – Legal Minimum Size – No person fishing recreationally shall possess a black sea bass less than twelve and one half inches (12.5") total length, and no person fishing recreationally shall possess, per calendar day, more than twenty-five (25) black sea bass whether caught within the jurisdiction of this State or otherwise. Compliance with the possession limit aboard vessels will be determined by dividing the number of fish on a vessel by the number of recreational fishermen onboard said vessel.

7.14.2-2 – Recreational Season – Annually the recreational season for black sea bass in Rhode Island waters is open from May 22 through October 11, 2010. The season will be closed from October 12 through October 31. The season will re-open from November 1 to December 31, 2010.

7.15 Spiny dogfish

7.15.1 Commercial Season and Possession Limits – The commercial season shall extend from May 1 until April 30 of the following year. RI is currently designated as a state that is part of the Northern region. A Northern region quota for spiny dogfish will be established annually and shall be the most recent allocation by the Atlantic States Marine Fisheries Commission (ASMFC) and/or the Secretary of the U.S. Department of Commerce as published in the Federal Register, which is currently set at 58% of the coastwide quota. It shall be unlawful to possess aboard or land from a vessel, in any one calendar day, more than 3,000 pounds of spiny dogfish. When notified that the quota in the Northern region has been harvested, or projected to be harvested, as determined by the National Marine Fisheries Service or the Atlantic States Marine Fisheries Commission, the Division of Fish and Wildlife shall file a notice with the

Office of the Secretary of State prohibiting the commercial landings, harvest and possession of spiny dogfish in state waters for the remainder of the designated period.

7.15.2 Prohibition of Finning – Finning is defined as the act of taking a spiny dogfish, removing the fins, and returning the remainder of the spiny dogfish to the sea. Finning spiny dogfish shall be prohibited in all state waters. Vessels that land spiny dogfish must land fins in proportion to carcasses, with a maximum 5% fin to carcass ratio, by weight. Fins may be removed at sea, but the corresponding carcass must be retained. All fins and carcasses must be landed at the same time and in the same location.

RIMF REGULATIONS [Penalty – Part 3.3 (RIGL 30-3-3)]

7.16 American Eel – No person shall take, attempt to take, possess, sell, or offer for sale any American Eel measuring less than six inches (6”). No person shall possess more than fifty (50) American eel per day unless commercially licensed pursuant to RIGL 20-2-26, 20-2-27, 20-2-28, 20-2-28.1. RIMFC REGULATIONS [Penalty – Part 3.3 (RIGL 30-3-3)]

7.17 American Shad – The commercial harvesting, landing, or possession of American Shad (*Alosa sapidissima*) within the State of Rhode Island and its territorial waters is prohibited. RIMF REGULATIONS [Penalty – Part 3.3 (RIGL 30-3-3)]

7.18 Weakfish

7.18.1 – Commercial

7.18.1-1 Minimum size -- No person fishing commercially shall take, possess, sell, possess for sale, or offer for sale any weakfish measuring less than sixteen inches (16”) total length whether caught within the jurisdiction of this State or otherwise.

7.18.1-2 Season and Possession Limits – During the period June 1 through June 30 and the period August 7 through November 8, the commercial possession limit for weakfish shall be 100 pounds of weakfish per vessel per calendar day. For directed trawl operations, codend mesh size must be ≥ 4.5” diamond or 4.0” square. At all other times, it shall be unlawful to possess aboard or land from a vessel more than 100 pounds of weakfish, as bycatch, in any one calendar day and it shall also be unlawful to possess aboard or land from a vessel any amount of weakfish, up to 100 pounds, where there is not at

least an equal poundage of other species on board the vessel. Provided, however, that the commercial hook and line fishery is not permitted a bycatch allowance.

7.18.2 Recreational

7.18.2-1 Minimum Size – No person fishing recreationally shall possess a weakfish less than sixteen inches (16") total length.

7.18.2-2 Season and Possession Limits – The recreational season for weakfish in Rhode Island waters is open January 1 through December 31, annually. No person fishing recreationally shall possess, per calendar day, more than one (1) fish whether caught within the jurisdiction of this state or otherwise. Compliance with the possession limit aboard vessels will be determined by dividing the number of fish on a vessel by the number of recreational fishermen onboard said vessel.

RIMF REGULATIONS [Penalty – Part 3.3 (RIGL 30-3-3)]

7.19 Atlantic Herring (*Clupea harengus*)

Commercial

7.19.1-1 Season and Possession Limits – The season for Atlantic herring begins annually on January 1. The possession limit is unlimited unless otherwise indicated in this section. When the Atlantic Herring quota has been harvested as determined by the National Marine Fisheries Service (NMFS), the season will close.

7.20 River Herring – No person shall land, catch, take, or attempt to catch or take any alewives, *Alosa pseudoharengus* or blueback herring *Alosa aestivalis,* from any marine waters of the State of Rhode Island. Possession of any alewives or blueback herring at any time is prohibited and shall be evidence that said herring was taken in violation of this section. RIMF REGULATIONS [Penalty – Part 3.3 (RIGL 20-3-3)]

7.21 Monkfish

7.21.1 – Commercial

7.21.1-1 Minimum size – No person fishing commercially shall land or possess any monkfish measuring less than seventeen inches (17") total length or eleven inches (11") tail length whether that fish was caught

within the jurisdiction of this State or otherwise.

7.21.1-2 <u>Possession Limits</u> –
(a) For any non-federally permitted RI licensed vessel, the possession limit will be 550 pounds tail weight or 1,826 pounds whole weight of monkfish per vessel per calendar day.

(b) Repealed

(c)The possession limit may be modified on the basis of a RI state water monkfish quota as set by DEM, which shall be equal to 1% of the federal southern New England monkfish quota. When 90% of the state water quota has been harvested as determined by the Division of Fish and Wildlife, the possession limit will decrease to 50 pounds tail weight or 166 pounds whole weight of monkfish per vessel per calendar day. When the state water quota has been harvested as determined by the Division, the Director shall close the state water monkfish fishery.

7.21.1-3 Vessels in possession of a federal permit allowing the harvest of monkfish may harvest monkfish in state waters if and only if they are operating during a previously and properly declared day-at-sea; in such instances, such vessels may harvest monkfish in the amount authorized to be possessed pursuant to federal regulations, and thus not be bound by the possession limits set forth in section 7.21.1-2. Vessels in possession of a federal permit allowing the commercial harvest of monkfish may also transit state waters in possession of monkfish in the amount authorized to be possessed pursuant to applicable federal regulations and land the same if so permitted pursuant to Rhode Island State Law, so long as all of the fish harvesting gear on board the vessel is stowed while in state waters.

<u>7.21.2 – Recreational</u>

7.21.2-1 <u>Minimum Size</u> – No person fishing recreationally, shall land or possess any monkfish measuring less than seventeen inches (17”) total length or eleven inches (11”) tail length whether that fish was caught within the jurisdiction of this State or otherwise.

7.21.2-2 <u>Possession Limits</u> – No person who is fishing recreationally in RI waters, may possess more than 50 pounds tail weight or 166 pounds whole weight of monkfish per vessel per calendar day.

RIMF REGULATIONS [Penalty – Part 3.3 (RIGL 20-3-3)]

<u>7.22 Cod</u>

7.22.1 – Commercial

7.22.1-1 Minimum size – No person fishing commercially shall land or possess any cod measuring less than twenty-two inches (22") total length whether caught within the jurisdiction of this State or otherwise.

7.22.1-2 Possession Limits –
(a) For any non-federally permitted RI licensed vessel, the possession limit will be 1,000 pounds of cod per vessel per calendar day.

(b) The possession limit may be modified on the basis of a RI state water cod quota as set by DEM, which shall be equal to 1% of the federal New England (Georges Bank) cod quota. When 90% of the state water quota has been harvested as determined by the Division of Fish and Wildlife, the possession limit will decrease to 75 pounds of cod per vessel per calendar day. When the state water quota has been harvested as determined by the Division, the Director shall close the state water cod fishery.

7.22.1-3 Vessels in possession of a federal permit allowing the harvest of cod may harvest cod in state waters if and only if they are operating during a previously and properly declared day-at-sea; in such instances, such vessels may harvest cod in the amount authorized to be possessed pursuant to federal regulations, and thus not be bound by the possession limits set forth in section 7.22.1-2. Vessels in possession of a federal permit allowing the commercial harvest of cod may also transit state waters in possession of cod in the amount authorized to be possessed pursuant to applicable federal regulations and land the same if so permitted pursuant to Rhode Island State Law, so long as all of the fish harvesting gear on board the vessel is stowed while in state waters.

7.22.2 – Recreational

7.22.2-1 Minimum Size – No person fishing recreationally shall land or possess any cod measuring less than twenty-two inches (22") total length whether caught within the jurisdiction of this State or otherwise.

7.22.2-2 Possession Limits – No person who is fishing recreationally in RI waters, may possess more than ten (10) cod per person per calendar day.

7.22.2-3 Vessels in possession of a federal permit allowing the recreational harvest of cod may transit state waters in possession of cod in the amount authorized to be possessed pursuant to applicable federal regulations and land the same if so permitted pursuant to Rhode Island

State Law, so long as all of the fish harvesting gear on board the vessel is stowed while in state waters.

RIMF REGULATIONS [Penalty – Part 3.3 (RIGL 20-3-3)]

7.23 Sea Scallops

7.23.1 – Commercial

7.23.1-1 Minimum size – No person fishing commercially shall land or possess any sea scallops measuring less than three and one half inches (3.5") shell length whether caught within the jurisdiction of this State or otherwise. Shell length is a straight line measurement from the hinge to the part of the shell that is furthest away from the hinge.

7.23.1-2 Possession Limits – For any non-federally permitted RI licensed vessel, the possession limit will be four hundred (400) pounds of shucked or fifty (50) bushels of in-shell scallops.

7.23.1-3 Vessels in possession of a federal permit allowing the commercial harvest of sea scallops may transit state waters in possession of sea scallops in the amount authorized to be possessed pursuant to applicable federal regulations and land the same if so permitted pursuant to Rhode Island State Law, so long as all of the fish harvesting gear on board the vessel is stowed while in state waters.

7.23.1-4 Equipment – The maximum dredge size allowed for a vessel in possession of sea scallops will be ten and one half feet (10.5'). The ring size used in a scallop dredge possessed or used by scallop vessels shall not be smaller than 4 inches (4"). The mesh size of a net, net material or any other material on the top of a scallop dredge (twine top) possessed or used by vessels fishing with scallop dredge gear shall not be smaller than 10 inch (10") square or diamond mesh.

7.23.2 – Recreational

7.23.2-1 Minimum Size – No person who is fishing recreationally, shall land or possess any sea scallops measuring less than three and one half inches (3.5") shell length whether caught within the jurisdiction of this State or otherwise. Shell length is a straight line measurement from the hinge to the part of the shell that is furthest away from the hinge.

7.23.2-2 Possession Limits – No person who is fishing recreationally in RI waters, will possess more than forty (40) pounds of shucked or five (5) bushels of in-shell scallops.

7.23.2-3 Equipment – The maximum dredge size allowed for a vessel in possession of sea scallops will be ten and one half feet (10.5').

RIMF REGULATIONS [Penalty – Part 3.3 (RIGL 20-3-3)]

7.24 Coastal Sharks

7.24.1 – Commercial

7.24.1-1 Commercial Species Groupings – Species managed under the Atlantic States Marine Fisheries Commission (ASMFC) Interstate Fishery Management Plan (IFMP) for Atlantic Coastal Sharks shall be grouped into six commercial "species groups" for management purposes, hereafter referred to as: Prohibited Species, Research Species, Smooth Dogfish, Small Coastal Sharks, Non-Sandbar Large Coastal Sharks, and Pelagic Sharks. These groupings apply to all commercial shark fisheries in state waters.

7.24.1-2 Commercial Fishing Year – The commercial shark fishery shall operate on a January 1 through December 31 fishing year.

7.24.1-3 Commercial Possession Limits – Possession limits, quotas, and seasonal periods for commercial shark fisheries will be established annually either through the National Marine Fisheries Service (NMFS) or the Atlantic States Marine Fisheries Commission (ASMFC). In accordance therewith:

a. Properly licensed commercial fishermen may possess any of the species of sharks listed in Table 7.1 below in the Smooth Dogfish, Small Coastal Sharks, Non-Sandbar Large Coastal Sharks and Pelagic Sharks species groups.

There are no commercial trip limits or possession limits for Smooth Dogfish, or for the sharks listed in the Small Coastal Sharks and the Pelagic Species groups.

c. No person shall possess more than 33 sharks, per vessel per calendar day, regardless of species, from the Non-Sandbar Large Coastal Sharks species group.

Table 7.1 Sharks in the Smooth Dogfish, Small Coastal Sharks, Non-Sandbar Large Coastal Sharks, and Pelagic Species Groups.

Common Name	Scientific Name
Smooth dogfish	
Smooth Dogfish	*Mustelus canis*

Small Coastal Sharks (SCS)	
Atlantic sharpnose	***Rhizoprionodon terraenovae***
Finetooth	***Carcharhinus isodon***
Blacknose	***Carcharhinus acronotus***
Bonnethead	***Sphyrna tiburo***
Non-Sandbar Large Coastal Sharks (LCS)	
Silky	***Carcharhinus falciformis***
Tiger	***Galeocerdo cuvier***
Blacktip	***Carcharhinus limbatus***
Spinner	***Carcharhinus brevipinna***
Bull	***Carcharhinus leucas***
Lemon	***Negaprion brevirostris***
Nurse	***Ginglymostoma cirratum***
Scalloped hammerhead	***Sphyrna lewini***
Great hammerhead	***Sphyrna mokarran***
Smooth hammerhead	***Sphyrna zygaena***
Pelagic Sharks	
Shortfin mako	***Isurus oxyrinchus***
Porbeagle	***Lamna nasus***
Common thresher	***Alopias vulpinus***
Oceanic whitetip	***Carcharhinus longimanus***
Blue	***Prionace glauca***

7.24.1-4 Transfer of Sharks – No person shall transfer sharks between vessels at sea.

7.24.1-5 Prohibition on the Possession of Sharks in the Prohibited and Research Species Groups – No person shall possess any species of sharks listed in Table 7.2 below in the Prohibited Species and Research Species groups, except in accordance with the provisions of section 7.24.1-8.

Table 7.2 Sharks in the Prohibited and Research Species Groups

Prohibited Species Group

Common Name	Scientific Name
Sand tiger	*Carcharias taurus*
Bigeye sandtiger	*Odontaspis noronhai*
Whale	*Rhincodon typus*
Basking	*Cetorhinus maximus*
White	*Carcharodon carcharias*
Dusky	*Carcharhinus obscurus*
Bignose	*Carcharhinus altimus*
Galapagos	*Carcharhinus galapagensis*
Night	*Carcharhinus signatus*
Reef	*Carcharhinus perezii*
Narrowtooth	*Carcharhinus brachyurus*
Caribbean sharpnose	*Rhizoprionodon porosus*
Smalltail	*Carcharhinus porosus*
Atlantic angel	*Squatina dumeril*
Longfin mako	*Isurus paucus*
Bigeye thresher	*Alopias superciliosus*
Sharpnose sevengill	*Heptranchias perlo*
Bluntnose sixgill	*Hexanchus griseus*
Bigeye sixgill	*Hexanchus nakamurai*
Research Species Group	
Sandbar	*Carcharhinus plumbeus*

7.24.1-6 Quota Specification – It shall be unlawful for any person to possess any species of shark in state waters when the National Marine Fisheries Service (NMFS) prohibits the possession of that species in federal waters.

When notified that the quota set for any species of shark is harvested or projected to be harvested, as determined by the National Marine Fisheries Service or the Atlantic States Marine Fisheries Commission, the Division of Fish and Wildlife shall file notice with the Office of the Secretary of State prohibiting the commercial landings, harvest and possession of that species in state waters for the remainder of the designated period.

7.24.1-7 Commercial License – A person must hold a state commercial license in accordance with RIGL Chapter 20-2.1 in order to commercially land, harvest, possess, and sell sharks in state waters.

7.24.1-8 Display and Research of Sharks – No person shall possess, transport, sell or offer to sell any of the shark species listed in the Prohibited and Research Species Groups without the possession of a valid state collector's permit obtained from the Division of Fish and Wildlife.

Any person granted a collector's permit shall:

a. Report to the Director, within 30 days after coming into possession of a shark. For each and every shark collected for research or display, the report to the Director shall include the following information: species identification, length, weight, date and location where caught by latitude and longitude coordinates, and the gear used; and

b. For each shark taken for live display, the holder of the permit shall also report to the Director annually, by December 31 of each year, for the life of the shark. The annual report shall include all of the information set forth in the original report to the Director pertaining to the sharks, as well as updated information on the length and weight of the shark.

7.24.1-9 Dealer Permit

a. No person shall sell any shark species to a person or dealer who does not possess a state commercial dealer license issued pursuant to RIGL 20-2.1, and a federal Commercial Shark Dealer Permit issued by the National Marine Fisheries Service.

b. No person shall purchase any shark species for sale or resale unless such person, possesses a state commercial dealer license issued pursuant to RIGL 20-2.1, and a federal Commercial Shark Dealer Permit issued by the National Marine Fisheries Service. [*Federal Commercial Shark Dealer Permits are open access and can be obtained by contacting the National Marine Fisheries Service Southeast Regional Office in St. Petersburg, FL at (727) 824-5326. Applications are available on the web at* http://sero.nmfs.noaa.gov/permits/permits.htm].

7.24.1-10 Authorized Commercial Gear – No person shall fish commercially for sharks in state waters by any method other than the following gear types:

- **Rod & reel**
- **Handlines, which are defined as a mainline to which no more than two gangions or hooks are attached. A handline is retrieved by hand, not by mechanical means, and must be attached to, or in contact with, a vessel.**
- **Small Mesh Gillnets which are defined as having a stretch mesh size smaller than 5 inches**

- **Large Mesh Gillnets which are defined as having a stretch mesh size equal to or greater than 5 inches.**
- **Trawl nets.**
- **Shortlines which are defined as fishing lines containing 50 or fewer hooks and measuring less than 500 yards in length. A maximum of 2 shortlines shall be allowed per vessel.**
- **Pound nets/fish traps.**
- **Weirs.**

7.24.1-11 Bycatch Reduction Measures – Vessels using shortlines and large-mesh gillnets to catch sharks must abide by the following bycatch regulation measures. Any vessels using shortlines or large-mesh gillnets that do not follow the following bycatch reduction measures are prohibited from possession, landing or selling any sharks.

a. Any vessel using a shortline shall:

(1) use corrodible circle hooks, which are defined as non-offset hooks with the point turned perpendicularly back to the shanks; and

(2) practice the protocols, and possess the federally required release equipment, for pelagic and bottom longlines for the safe handling, release, and disentanglement of sea turtles and other non-target species; and

(3) have all captains and vessel owners federally certified in using, handling and release equipment. Captains and vessel owners can become certified by attending a Protected Species Safe Handling, Release, and Identification Workshop offered by NOAA. [Information on these workshops can be found at http://www.nmfs.noaa.gov/sfa/hms/workshops/index.htm or by calling the Management Division at (727) 824-5399.]

b. Any vessel using large-mesh gillnets, must use nets that are shorter than 2.5 kilometers.

7.24.1-12 Prohibition of Finning – Finning is defined as the act of taking a shark and removing its fins. Finning of sharks is prohibited in all state waters. All sharks, with the exception of smooth dogfish, possessed by commercial fishermen within state boundaries must have the tails and fins attached naturally to the carcass until landed. Fins may be cut as

long as they remain attached to the carcass, by natural means, with at least a small portion of uncut skin. Sharks may be gutted and bled provided the tail is not removed. Sharks taken and possessed by commercial fishermen may have the heads removed, but no commercial fisherman shall fillet a shark at sea or otherwise cut a shark into pieces at sea.

Commercial fishermen may completely remove the fins of smooth dogfish from March through June of each year. If fins are removed, the total wet weight of the shark fins may not exceed 5 percent of the total dressed weight of smooth dogfish carcasses landed or found on board a vessel.

From July through February for the smooth dogfish fishery only, commercial fishermen may completely remove the head, tail, pectoral fins, pelvic (ventral) fins, anal fin, and second dorsal fin, but must keep the dorsal fin attached naturally to the carcass through landing. Fins may be cut as long as they remain attached to the carcass, by natural means, with at least a small portion of uncut skin. If fins are removed, the total wet weight of the shark fins may not exceed 5 percent of the total dressed weight of smooth dogfish carcasses landed or found on board a vessel.

7.24.2 – Recreational

7.24.2-1 Recreationally Permitted Species – Recreational fishermen may possess any of the species of sharks listed in Table 7.3.

Table 7.3 Recreationally Permitted Species List.

Recreationally PERMITTED Species	
Smooth Dogfish[1]	*Mustelus canis*
Atlantic sharpnose	*Rhizoprionodon terraenovae*
Finetooth	*Carcharhinus isodon*
Blacknose	*Carcharhinus acronotus*
Bonnethead	*Sphyrna tiburo*
Tiger	*Galeocerdo cuvier*
Blacktip	*Carcharhinus limbatus*
Spinner	*Carcharhinus brevipinna*
Bull	*Carcharhinus leucas*
Lemon	*Negaprion brevirostris*
Nurse	*Ginglymostoma cirratum*
Scalloped hammerhead	*Sphyrna lewini*
Great hammerhead	*Sphyrna mokarran*
Smooth hammerhead	*Sphyrna zygaena*
Shortfin mako	*Isurus oxyrinchus*
Porbeagle	*Lamna nasus*
Common thresher	*Alopias vulpinus*

Oceanic whitetip	***Carcharhinus longimanus***
Blue	***Prionace glauca***

[1] **Smooth dogfish are not regulated in federal waters and are not prohibited as a result.**

<u>7.24.2-2</u> Recreationally Prohibited Species – No person fishing recreationally shall possess, in state waters any shark species that is not permitted to be taken in federal waters, as listed in Table 7.4.

Table 7.4 Recreationally Prohibited Species List.

Recreationally PROHIBITED Species	
Sandbar	***Carcharhinus plumbeus***
Silky	***Carcharhinus falciformis***
Sand tiger	***Carcharias aurus***
Bigeye sand tiger	***Odontaspis noronhai***
Whale	***Rhincodon typus***
Basking	***Cetorhinus maximus***
White	***Carcharodon carcharias***
Dusky	***Carcharhinus obscurus***
Bignose	***Carcharhinus altimus***
Galapagos	***Carcharhinus galapagensis***
Night	***Carcharhinus signatus***
Reef	***Carcharhinus perezii***
Narrowtooth	***Carcharhinus brachyurus***
Caribbean sharpnose	***Rhizoprionodon porosus***
Smalltail	***Carcharhinus porosus***
Atlantic angel	***Squatina dumeril***
Longfin mako	***Isurus paucus***
Bigeye thresher	***Alopias superciliosus***
Sharpnose sevengill	***Heptranchias perlo***
Bluntnose sixgill	***Hexanchus griseus***
Bigeye sixgill	***Hexanchus nakamurai***

<u>7.24.2-3</u> Recreational Landings Requirements – No person fishing recreationally shall possess or land sharks that do not have heads, tails, and fins attached naturally to the carcass. Sharks may be gutted and bled by making an incision at the base of the caudal peduncle provided the tail is not removed. No a person fishing recreationally shall fillet a shark at sea or otherwise cut a shark into pieces at sea.

<u>7.24.2-4</u> Recreational Minimum Size Limits – No person fishing recreationally shall possess a shark with a fork length less than 54 inches, with the exception of Atlantic sharpnose, blacknose, finetooth, bonnethead, and smooth dogfish, which have no minimum size limit. (SeeTable 7.4).

Table 7.5 Recreational Minimum Size Limits

No Minimum Size Limit	At Least 54 inches (4.5 Feet) Fork Length	
Smooth Dogfish Atlantic sharpnose Finetooth Blacknose Bonnethead	Tiger Blacktip Spinner Bull Lemon Nurse Great hammerhead	Shortfin mako Porbeagle Common thresher Oceanic whitetip Blue Scalloped hammerhead Smooth hammerhead

7.24.2-5 Authorized Recreational Gear – No person fishing recreationally shall take sharks by any method other than rod and reel or handline. Handlines are defined as a mainline to which no more than two gangions or hooks are attached; retrieved by hand, not by mechanical means; and attached to, or in contact with, a vessel.

7.24.2-6 Recreational Shore-Fishing Possession Limits – No recreational fishermen fishing from shore shall possess, in any one calendar day, more than one shark from the recreationally permitted species list (*Section 7.24.2-1, Table 7.3*), except that each such fishermen may individually possess one additional bonnethead *(Sphyrna tiburo)*, and one additional Atlantic sharpnose *(Rhizoprionodon terraenovae)* per calendar day. However, recreational shore-fishermen may harvest an unlimited amount of smooth dogfish.

Sharks that are transported by a vessel are considered 'boat assisted' and are regulated under the more restrictive vessel-fishing possession limits in section 7.24.2-7 regardless of how or where they were caught.

7.24.2-7 Recreational Vessel-Fishing Possession Limits –
No vessel engaged in recreational fishing vessels shall possess, in any one calendar day, or any one trip, whichever is less, more than one shark from the recreationally permitted species list (*Section 7.24.2-1, Table 7.3)*, regardless of the number of people on board the vessel, except that each recreational fisherman fishing from a vessel may individually possess one additional bonnethead *(Sphyrna tiburo)*, and one additional Atlantic sharpnose *(Rhizoprionodon terraenovae)*, per calendar day, or per trip, whichever is less. However, recreational vessel-fishermen may harvest an unlimited amount of smooth dogfish.

RIMF REGULATIONS [Penalty – Part 3.3 (RIGL 20-3-3)]

Public Hearing Item #3 – Adoption of regulations governing the Commercial taking of Skates:

7.25 Skates

7.25.1 – Commercial

Option 1: Status Quo (no possession limit or prohibition by species)

Option 2: Intended to mirror federal regulations regarding prohibited skate species and possession limit for skate wings and skate bait by vessels in state waters.

7.25.1-1 Commercial Fishing Year – The commercial skate fishery shall operate on a May 1 through April 30 fishing year.

7.25.1-2 Commercial Possession Limits – Possession limits, quotas, and seasonal periods for commercial skate fisheries are established by the National Marine Fisheries Service (NMFS) as set forth in 50 CFR Part 648 as adopted on June 16, 2010.

7.25.1-3 Vessels fishing in state waters not on a previously declared DAS may possess and land up to the maximum possession limit established by National Marine Fisheries Service (NMFS) as set forth in 50 CFR Part 648 as adopted on June 16, 2010.

7.25.1-4 It shall be unlawful for any person to possess any species of skate in state waters when the National Marine Fisheries Service (NMFS) prohibits the possession of that species in federal waters.

7.25.1-5 When notified that the quota set for any species of skate is harvested or projected to be harvested, as determined by the National Marine Fisheries Service, the Division of Fish and Wildlife shall file notice with the Office of the Secretary of State prohibiting the commercial landings, harvest and possession of that species in state waters for the remainder of the designated period.

RIMF REGULATIONS [Penalty – Part 3.3 (RIGL 20-3-3)]

Rule 8. EFFECTIVE DATE

The foregoing rules and regulations Rhode Island Marine Statutes and Regulations, after due notice, are hereby adopted and filed with the Secretary of State this ~~10th day of December, 2010~~ to become effective 20 days from filing, unless otherwise indicated below, in accordance with the provisions of Chapters 42-17.1, 42-17.6, 20-1-2, 20-1-4, 20-3-2 through 20-3-6, 20-4 through 20-10, and 42-35 the General Laws of Rhode Island of 1956, as amended.

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~~W. Michael Sullivan, PhD~~ **Janet Coit**
Director, Department of Environmental Management

Notice Given: N/A
Public Hearing: N/A

Filing date: ~~12/10/2010~~
Effective date: ~~12/30/2010~~
~~**ERLID# 6269**~~