



RHODE ISLAND

DEPARTMENT OF ENVIRONMENTAL MANAGEMENT

DIVISION OF MARINE FISHERIES

Three Fort Wetherill Road

Jamestown, Rhode Island 02835

PUBLIC NOTICE OF PROPOSED DIRECT FINAL RULEMAKING

Agency: Department of Environmental Management

Division: Marine Fisheries

Rule identifier: New ERLID #'s tbd

Regulation title(s):

- a. *Part 3 – Finfish* (RICR 250-RICR-90-00-3)
- b. *Part XII – Striped Bass*
- c. *Part XVI – Menhaden*
- d. *Part 1 – General Provisions*

Rulemaking action: Proposed Direct Final Rule.

Type of filing: Adoption (Part 3), repeals (Parts XII and XVI), and amendment (Part 1)

Timetable for action on the proposed rule:

- Submission to Office of Regulatory Reform: September 13, 2017
- Date of public notice: September 15, 2017
- Date of hearing: N/A
- End of Comment period: October 16, 2017

Summary of proposed rule which is expected to be noncontroversial:

- a. To consolidate three separate Rhode Island Marine Fisheries regulations (RIMFR) into a single regulation (proposed adoption of new *Part 3 – Finfish* (ERLID # tbd), along with proposed repeals of RIMFR *Part 3 – Finfish* (RICR 250-RICR-90-00-3), *Part XII – Striped Bass*, and *Part XVI – Menhaden*). Contents of these three regulations are to be transferred in their entirety and substance to the new regulation; non-substantive technical edits and/or clarifications are included;
- b. To codify the format of the regulation pursuant with the requirements of the Rhode Island Code of Regulations (RICR); and
- c. To make non-substantive technical revisions and clarifications to *Part 1 – Definitions* in support of items a. and b.

As a Direct Final Rule, if no formal objection is received by 4:00 PM on October 16, 2017, the Department of Environmental Management will file the rule without affording the public further opportunity for public comment, and the rule will become effective on October 16, 2017.

Authority for this rulemaking: R.I. Gen. Laws Title 20, R.I. Gen. Laws Chapters 42-17.1, 42-17.6, and 42-17.7, and in accordance with R.I. Gen. Laws § 42-35-2.11, Administrative Procedures Act.

Filed with Sec. of State's office on September 15, 2017



STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS
DEPARTMENT OF ENVIRONMENTAL MANAGEMENT

BUREAU OF NATURAL RESOURCES
FISH AND WILDLIFE
&
LAW ENFORCEMENT



RHODE ISLAND MARINE FISHERIES REGULATIONS

Part XII Striped Bass

March 23, 2017

Companion Document to accompany new (ADOPTION) regulation.

Purpose of filing is to consolidate and re-codify regulations pursuant to the Rhode Island Secretary of States "Rules and Regulations Formatting and Filing Manual". Minor non-substantive technical clarifications/revisions are also proposed.

Current rules "Part 3 – Finfish", "Part XII – Striped Bass", and "Part XVI – Menhaden" proposed to be REPEALED, with contents of those regulations to be transferred to proposed ADOPTION of "Part 3 Finfish (250-RICR-90-00-3)"

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

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PURPOSE

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

AUTHORITY

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

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 Regulations, *Part I - Definitions*.

SEVERABILITY

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

SUPERSEDED RULES AND REGULATIONS

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

REGULATIONS

12.1 Recreational:

12.1.1 Minimum size: Twenty-eight inches (28") in total length, whether caught within the jurisdiction of this State, or otherwise.

12.1.2 Season: ~~There is no closed season for recreational striped bass~~ **January 1 through December 31**.

12.1.3 Possession limit: One (1) fish per person per day, whether caught within the jurisdiction of Rhode Island or otherwise.

~~(A) Possession limit compliance aboard vessels:~~

~~(1) Licensed party/charter vessels: Possession limit compliance aboard licensed party/charter vessels will be determined by dividing the number of~~

~~fish by the number of fishermen onboard the boat.~~

~~(2) Multiple licensed recreational fishermen fishing from a single vessel:
Possession limit compliance aboard vessels with multiple licensed fishermen
will be determined by dividing the number of fish by the number of licensed
fishermen on board said vessel.~~

Commented [DP(1)]: Duplicate. See Part 1

12.2 Commercial – General Category:

12.2.1 Minimum size: Thirty four (34) inches or greater in total length, whether caught within the jurisdiction of this state or otherwise.

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

(A) January 1 – May 27: Closed.

(B) May 28 – August 31:

(1) Allocation: Seventy percent (70%) of the general category quota will be available in this sub-period.

(2) Possession limit: Five (5) fish per person per calendar day, or if fishing from a vessel, five (5) fish per vessel per calendar day.

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

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

(C) September 10 – December 31:

(1) Allocation: Thirty percent (30%) of the general category quota will be available in this sub-period.

(2) Possession limit: Five (5) fish per person per calendar day, or if fishing from a vessel, five (5) fish per vessel per calendar day.

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

(4) The sub-period will close when 30% of the general category quota is projected to be harvested.

(5) If ~~DFW~~ **DEM** determines that the quota will be exceeded or will not be met before the end of the fall season, DFW may adjust that catch rate accordingly on or after September 15 annually.

12.3 If ~~the Division~~ **DEM** estimates that the Floating Fish Trap sector will not fully utilize its allocation prior to the end of the season, beginning on October 15, the Division may move the Floating Fish Trap allocation into the general category fishery. ~~The Division~~ **DEM** will consult with the Floating Fish Trap Licensees or their designee prior to enacting any allocation roll over, and will maintain written correspondence in the form of a letter on file as proof of said consultation.

12.4 Commercial - Floating Fish Trap:

12.4.1 Floating fish trap operators must be permitted pursuant to ~~RIGL §20-5-1, and abide by all conditions as specified in RIGL Chapter 20-5 and RIMFR Part XIV. Application shall be made to the DFW on forms prescribed by the Director~~ **RIMFR Part 6 – General Equipment Provisions.**

12.4.2 Allocation: During a single calendar year, the floating fish trap quota shall not be more than thirty-nine percent (39%) of the annual Rhode Island commercial quota.

12.4.3 Minimum size: Twenty-six inches (26") in total length.

12.4.4 Season: April 1 through December 31.

12.4.5 Possession limit: Unlimited. Once seventy percent (70%) of the seasonal allocation is projected to be harvested the possession limit shall be 200 pounds per floating fish trap licensee per calendar day.

12.4.6 When DFW has determined that the annual quota allocated to floating fish traps has been reached, the fishery will terminate.

12.4.7 Reporting: All floating fish trap operators shall keep daily records of striped bass landings and report landings to SAFIS every Monday, Wednesday, and Friday, of every week that the trap is in operation.

12.4.8 If the floating fish trap operators are found to be out of compliance with the reporting requirements, the operators will be notified, and default to following program:

(A) April 1 – December 31: One hundred percent (100%) of the floating fish trap

quota shall be available during this sub-period. Once eighty percent (80%) of the seasonal allocation is projected to be harvested the possession limit shall be 500 pounds per floating fish trap licensee per calendar day.

12.5 Gillnet Prohibition for Striped Bass: No person shall take or possess any striped bass while gillnetting, or while hauling a gillnet.

~~12.6 Striped Bass 50-yard Closure Zone for Gill Nets: It shall be illegal to set, haul, or maintain a gill net within 50 yards of the Rhode Island coastline (mean high tide line) in the following areas and during the following seasons:~~

~~12.6.1 Areas: From Monahan's Dock breakwater (State Pier #5) to the southernmost tip of Matunuck Pt. (Carpenter's Bar); in Narragansett Bay, Mt. Hope Bay, and Sakonnet River (as described in Part 13.4-1), and from the southern tip of Sachuest Point to the juncture of Second Beach and Sachuest Point, and from the southwest corner on Price's Neck to Castle Hill Light House.~~

~~12.6.2 Season Closure: All gill netting is prohibited within 50 yards of the Rhode Island coastline (mean high water line) during the period October 15 – December 31 annually.~~

Commented [DP(2)]: Duplicate. Gill net prohibition; not specific to Striped bass. See Part 6 Section 6.8.3 B.

12.7 Hybrid Striped Bass Cultured Striped Bass:

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

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

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

12.7.3 Each fish or fish product shall have affixed to it a tag ~~bearing the same information listed in~~ **pursuant to** section ~~12.8.2 XX~~.

Commented [DP(3)]: New citation provided in re-coded reg

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

12.7.5 Fish shipped in the round and filleted by the seller, shall have the tag

removed and wrapped in with the fillets when sold.

12.7.6 The consignee of each subsequent sale shall retain a copy of the bill of lading or similar accountable document for 1 year, and make it available to the Department upon request.

12.8 **Commercial Striped Bass Tags:** Each individual Striped bass shall be immediately marked with tags available from ~~DFW~~ **DEM**. No Striped bass may be sold unless it has been properly identified with such tag. ~~DFW~~ **DEM** may designate tagging agents as appropriate. All designated tagging agents shall keep and maintain the required forms and reports specified by ~~DFW~~ **DEM**. All tag reports and unused tags must be returned to ~~DFW~~ **DEM** by January 1st of the following year. Failure to return reports and unused tags may result in the tagging agent becoming ineligible to receive striped bass tags in the future.

12.9 Any person recreationally harvesting a striped bass thirty-four (34) inches or larger shall at the time of harvest have the right pectoral fin removed at a point as close to the body of the fish as possible.

Commented [DP(4): Re-located to Recreational section above

~~12.10 Violations for Non-compliance:~~

~~12.10.1 If the DFW and/or the Chief of the Division of Law Enforcement determine that there has been non-compliance with the provisions of these regulations or the permit agreement, the owner and/or operator of the permitted vessel shall be advised of such determination and the specific grounds therefore in writing by delivery of same by certified mail or by personal service upon the owner or operator in compliance with the requirements set out in Rule 4 of the Rhode Island Superior Court Rules of Civil Procedure. The determination shall specifically include notice that an opportunity for an impartial hearing is available before the Administrative Adjudication Division pursuant to R.I. Gen. Laws Chapter 42-17.7 relative to either or both the finding that sufficient evidence exists of non-compliance with the provisions of these regulations or the permit agreement as well as the termination of the permit and or the imposition of a penalty pursuant to RIGL 20-1-16.~~

~~12.11 Penalties:~~

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

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

~~20 of RIGL "Fish and Wildlife".~~

~~12.12 Appeals:~~

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

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

Commented [DP(5)]: Duplicate. See Part 1

EFFECTIVE DATE

~~The foregoing rules and regulations, after due notice, are hereby adopted and filed with the Secretary of State in accordance with the provisions of Title 20, Chapters 42-17.1, 42-17.6, and 42-17.7, and in accordance with Chapter 42-35-18(b)(5), Administrative Procedures Act of the Rhode Island General Laws of 1956, as amended.~~

Janet L. Coit
Director, Department of Environmental Management

Notice Given: 01/13/2017
Public Hearing: 02/13/2017
Filing date: 03/23/2017
Effective date: 04/12/2017
ERLID#: 8474



STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS
DEPARTMENT OF ENVIRONMENTAL MANAGEMENT

BUREAU OF NATURAL RESOURCES
FISH AND WILDLIFE
&
LAW ENFORCEMENT



RHODE ISLAND MARINE FISHERIES
REGULATIONS

Part XII
Striped Bass

March 23, 2017

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

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PURPOSE

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

AUTHORITY

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

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~~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 Regulations, *Part I - Definitions*.~~

SEVERABILITY

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

SUPERSEDED RULES AND REGULATIONS

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

REGULATIONS

12.1 Recreational:

~~12.1.1 Minimum size: Twenty-eight inches (28") in total length, whether caught within the jurisdiction of this State, or otherwise.~~

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

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~~(A) Possession limit compliance aboard vessels:~~

~~(1) Licensed party/charter vessels: Possession limit compliance aboard licensed party/charter vessels will be determined by dividing the number of fish by the number of fishermen onboard the boat.~~

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~~12.2 Commercial — General Category:~~

~~12.2.1 Minimum size: Thirty four (34) inches or greater in total length, whether caught within the jurisdiction of this state or otherwise.~~

~~12.2.2 Seasons, allocations, and possession limits: During a single calendar year, the general category Striped bass fishery shall be allowed to harvest not more than sixty-one percent (61%) of the annual Rhode Island commercial quota.~~

~~(A) January 1 — May 27: Closed.~~

~~(B) May 28 — August 31:~~

~~(1) Allocation: Seventy percent (70%) of the general category quota will be available in this sub-period.~~

~~(2) Possession limit: Five (5) fish per person per calendar day, or if fishing from a vessel, five (5) fish per vessel per calendar day.~~

~~(3) The fishery will be closed in each calendar week from 12:00 AM Friday until 11:59 PM Saturday during this sub-period. There will be no commercial possession or sale of Striped bass on these days for general category commercial fishermen.~~

~~(4) The sub-period will close once seventy percent (70%) of the general category quota is projected to be harvested if prior to August 31.~~

~~(C) September 10 — December 31:~~

~~(1) Allocation: Thirty percent (30%) of the general category quota will be available in this sub-period.~~

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~~(5) If DFW determines that the quota will be exceeded or will not be met before the end of the fall season, DFW may adjust that catch rate accordingly on or after September 15 annually.~~

~~12.3 If the Division estimates that the Floating Fish Trap sector will not fully utilize its allocation prior to the end of the season, beginning on October 15, the Division may move the Floating Fish Trap allocation into the general category fishery. 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.~~

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

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~~12.7.2 Packages and containers containing aquaculture products shall be tagged or labeled with a uniform series of 14 digit numbers and letters as shown in the example below:~~

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

~~12.7.3 Each fish or fish product shall have affixed to it a tag bearing the same information listed in section 12.8.2.~~

~~12.7.4 The sale of this product shall be accompanied by a receipt showing: (a) the date of sale; (b) name, address, and permit number of the aquaculture facility; (c) numbers and species of Striped bass sold; (d) name of purchaser.~~

~~12.7.5 Fish shipped in the round and filleted by the seller, shall have the tag removed and wrapped in with the fillets when sold.~~

~~12.7.6 The consignee of each subsequent sale shall retain a copy of the bill of~~

~~lading or similar accountable document for 1 year, and make it available to the Department upon request.~~

~~12.8 Commercial Striped Bass Tags: Each individual Striped bass shall be immediately marked with tags available from DFW. No Striped bass may be sold unless it has been properly identified with such tag. DFW may designate tagging agents as appropriate. All designated tagging agents shall keep and maintain the required forms and reports specified by DFW. All tag reports and unused tags must be returned to DFW by January 1st of the following year. Failure to return reports and unused tags may result in the tagging agent becoming ineligible to receive striped bass tags in the future.~~

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~~12.10 Violations for Non-compliance:~~

~~12.10.1 If the DFW and/or the Chief of the Division of Law Enforcement determine that there has been non-compliance with the provisions of these regulations or the permit agreement, the owner and/or operator of the permitted vessel shall be advised of such determination and the specific grounds therefore in writing by delivery of same by certified mail or by personal service upon the owner or operator in compliance with the requirements set out in Rule 4 of the Rhode Island Superior Court Rules of Civil Procedure. The determination shall specifically include notice that an opportunity for an impartial hearing is available before the Administrative Adjudication Division pursuant to R.I. Gen. Laws Chapter 42-17.7 relative to either or both the finding that sufficient evidence exists of non-compliance with the provisions of these regulations or the permit agreement as well as the termination of the permit and or the imposition of a penalty pursuant to RIGL 20-1-16.~~

~~12.11 Penalties:~~

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

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

~~12.12 Appeals:~~

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

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

EFFECTIVE DATE

~~The foregoing rules and regulations, after due notice, are hereby adopted and filed with the Secretary of State in accordance with the provisions of Title 20, Chapters 42-17.1, 42-17.6, and 42-17.7, and in accordance with Chapter 42-35-18(b)(5), Administrative Procedures Act of the Rhode Island General Laws of 1956, as amended.~~

Janet L. Coit
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