



RHODE ISLAND

DEPARTMENT OF ENVIRONMENTAL MANAGEMENT

DIVISION OF MARINE FISHERIES

Three Fort Wetherill Road
Jamestown, Rhode Island 02835

PUBLIC NOTICE OF PROPOSED RULEMAKING

Agency: Department of Environmental Management

Division: Marine Fisheries

Regulation title and identifier:

1. *Part 1 – Definitions and General Provisions* (250-RICR-90-00-1)
2. *Part 3 – Finfish* (250-RICR-90-00-3)
3. *Part 12- Regulations for an Expanded Aggregate Program for Commercial Black Sea Bass and Summer Flounder* (250-RICR-90-00-12)

Rulemaking action: Proposed rulemaking

Type of Filing: Proposed amendments (*Parts 1 and 3*); and adoption (*Part 12*)

Timetable for action on the proposed rule:

- Date of public notice: May 18, 2018
- Date of hearing: June 4, 2018
- End of comment period: June 18, 2018
- RI Marine Fisheries Council: June 26, 2018
- Anticipated filing date: July, 2018

Summary of proposed rule (*note: by clicking on the hearing item in this Summary, it will take you directly to the proposed rule*):

1. Hearing Item #1: Proposed amendment to “*Part 1 - Definitions and General Provisions*”, regarding modification and/or deletion of terms (section 1.7);
2. Hearing Item #2: Proposed amendment to “*Part 3 – Finfish*”, regarding the following:
 - a. Removal of language “whether caught within the jurisdiction of this State or otherwise”, in several locations throughout the regulation, as unneeded and/or inconsistent with language regarding transiting (sections 3.7.1, 3.7.2, 3.8.1, 3.9.1, 3.9.2, 3.10.1, 3.13.1, 3.13.2, 3.20.1, 3.20.2, 3.21.1, 3.21.2, 3.23.1, 3.23.2, 3.24.1, 3.24.2, 3.28.1, 3.28.2, 3.29.1, 3.29.2, 3.30.1, 3.30.2, 3.31.1, 3.31.2);
 - b. Transfer of quota between the striped bass floating fish trap and general category fisheries (section 3.9.2(A)(3));
 - c. Coastal shark management, to increase the minimum size for recreational Shortfin Mako for consistency with NOAA (section 3.19.1(C)).

- d. Coastal shark management, to decrease the fishing year starting possession limit for Aggregated Large Coastal (LCS) & Hammerhead species groups for consistency with ASMFC and/or NOAA Fisheries Management Plans (section 3.19.2(F));
 - e. Coastal shark management, regarding rod and reel gear and safe handling requirements (sections 3.19.1(F) & 3.19.2(I);
 - f. Commercial Cod management, to provide for federally permitted vessels to harvest, possess, or land Cod in state waters in the amount equal to the federal regulations, consistent with other groundfish species (e.g., haddock) (section 3.20);
 - g. Commercial Skate management, to provide for the harvest of Barndoor skate in the Skate wing fishery (section 3.26.2);
3. Hearing Item #3: Proposed adoption of new regulation “*Part 12- Regulations for an Expanded Aggregate Program for Commercial Black Sea Bass and Summer Flounder*” to expand aggregate opportunities to commercial fishermen as a means to provide greater operational flexibility and reduce discards, and to gather data necessary to make informed decisions about the impact of such a program on harvest rates and quota management.

Comments invited: All interested parties are invited to submit written comments concerning the proposed regulations by 4:00PM on June 18, 2018. Comments may be submitted to the following address:

DEM Division of Marine Fisheries
3 Fort Wetherill Road
Jamestown, RI 02835
ATTN: Peter Duhamel

Written comments may also be submitted by [email](#).

Public hearing information:

The PUBLIC HEARING will be held at **6:00PM** on **Monday, June 4, 2018** at the University of Rhode Island Bay Campus, Corless Auditorium, South Ferry Road, Narragansett, RI 02882.

The rooms are accessible to the disabled. Interpreter services for the deaf and hard of hearing will be provided if such services are requested at least three (3) business days prior to the hearing by contacting the RI Commission on the Deaf and Hard of Hearing at (401) 222-5300; or (401) 222-5301 (TTY); or <http://www.cdhh.ri.gov/>.

For further information please contact the email or address provided above.

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 § 42-35-18(b)(5), Administrative Procedures Act.

Regulatory Findings: In the development of the proposed amendment, consideration will be given to: (1) alternative approaches; (2) overlap or duplication with other statutory and regulatory provisions; and (3) significant economic impact on small business.

Filed with Sec. of State's office pursuant to R.I. Gen. Laws § 42-35-2.7 "Notice of proposed rulemaking" on May 25, 2018.

Public Hearing

June 4, 2018

Proposed new regulation (Adoption)

250-RICR-90-00-12

TITLE 250 – DEPARTMENT OF ENVIRONMENTAL MANAGEMENT

CHAPTER 90 – MARINE FISHERIES

SUBCHAPTER 00 – N/A

PART 12 – Research Pilot Aggregate Program

12.1 Purpose

The purpose of the program will be to assess the effectiveness and viability of an aggregate landings approach as an alternative to traditional daily possession limit quota management in the commercial summer flounder and black sea bass fisheries.

12.2 Authority

These rules and regulations are promulgated pursuant to 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 § 42-35-18(b)(5), Administrative Procedures Act, as amended.

12.3 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.

12.4 Definitions

See Rhode Island Marine Fisheries Regulations, Part 1 of this Subchapter.

12.5 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.

12.6 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 these regulations 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.

12.7 Regulations

12.7.1 Applicability.

A group of vessels will be selected through an application process established herein to implement a pilot program to gather data on aggregate limits and their effect on harvest rates and quotas for the commercial summer flounder and black sea bass fisheries.

12.7.2 Eligibility.

- A. Persons must hold a valid commercial fishing license in Rhode Island and be the owner and operator of a vessel that is licensed to harvest and land summer flounder and black sea bass in state waters, and must remain so licensed for the entirety of 2018.
- B. Persons or vessels that participated in Summer Flounder Aggregate Landing Program in 2018 are not eligible to participate for the remainder of 2018.
- C. Applicant vessels must have a historical record of landing summer flounder and black sea bass as recorded in SAFIS dating back to at least 2014.
- D. Three participating vessels from each of the following gear types will be selected for participation: gill net, otter trawl, rod and reel, fish pot, lobster pot, multi-gear fisher.
- E. Applicant vessels shall agree to install a vessel monitoring device on their vessel. The cost of such vessel monitoring device shall be the responsibility of the participant.
- F. Applicant vessels shall agree to submit catch and effort information through a Division approved electronic application. The cost of such application shall be the responsibility of the participant.
- G. Applicant vessels shall agree to allow the Department to publicly disclose all landings of summer flounder and black sea bass on a single-vessel resolution basis.

H. Applicant vessels shall agree to take any state or federally authorized observers at any time.

I. Application required. Eligible persons must apply on forms as prescribed by the Director.

12.7.3 Approval Process.

A. Evaluation criteria: All permit applications submitted to the Division will be reviewed and assessed by the Director for completeness and accuracy.

B. If the number of eligible applicants by gear type category exceeds the number of permits available, the applicants will be selected for participation through a lottery process.

12.7.4 Permit Conditions.

A. Vessel monitoring devices and reporting applications shall be maintained in operational order and be actively engaged at all times when fishing. Malfunctioning of any device will result in permit suspension until the device is returned to operational order.

B. Each participant shall submit catch and effort information through the Division approved electronic application with each landing event.

C. All participating vessels shall take any state or federally authorized observers at any time.

D. All license/permit holders and vessels participating in the pilot program must adhere to all applicable rules and regulations governing commercial fishing operations, 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 DDAS counting area for summer flounder when properly enrolled in the Small Mesh Exemption Program.

E. Permits are non-transferable. Only vessels authorized by the Director may participate in the pilot program during 2018.

12.7.5 Possession Limits.

A. The weekly possession limit for summer flounder and black sea bass will be equal to the daily limit for each species as set forth in Part 3 of this Subchapter (250-RICR-90-00-3) multiplied by the number of open days as set forth in the standard regulatory plan.

- B. The weekly periods for the duration of the program will be issued explicitly by the Division to each participant. Alternate weekly periods will not be authorized.

12.7.6 Compliance and Enforcement.

- A. Failure to adhere to any of the terms and conditions will result in permit revocation for the remainder of the pilot program duration.
- B. Participating vessels that drops out of, or is expelled from, the program will be prohibited from harvesting and landing summer flounder and black sea bass in an aggregate amount for the duration of 2018.
- C. If a participant exceeds their weekly aggregate limit for either species, or if the participating vessel is found to be in violation of any of the terms and conditions set forth in these regulations, the participant's permit will be revoked and will be subject to potential enforcement action, including but not limited to: confiscation of catch, prohibition on the harvest and landing of summer flounder and black sea bass 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 pilot program.