

**Final annotations - Part 3 – Finfish**

**Public Hearing – November 20, 2017**

**Filed December 15, 2017; effective date January 4, 2018**

**250-RICR-90-00-3**

**TITLE 250 – DEPARTMENT OF ENVIRONMENTAL MANAGEMENT**

**CHAPTER 90 – MARINE FISHERIES**

**SUBCHAPTER 00 – N/A**

PART 3 – Finfish

**3.7 Black Sea Bass**

**3.7.2 Commercial**

- A. Minimum size: Eleven (11) inches, whether caught within the jurisdiction of this State or otherwise.
- B. Seasons, allocations, and possession limits: 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 ASMFC and/or the Secretary of the NOAA Fisheries. The quota shall be available during the following sub-periods:
  - 1. January 1 through April 30:
    - a. Allocation: Twenty-five percent (25%) of the quota.
    - b. Possession limit: ~~750~~ **500** pounds per vessel per week.
  - 2. May 1 through June 30:
    - a. Allocation: Twenty-five percent (25%) of the quota.
    - b. Possession limit: Fifty (50) pounds per vessel per calendar day.  
~~The commercial fishery is closed on Friday of each week during this sub-period.~~
  - 3. July 1 through July 31:
    - a. Allocation: Nineteen and a half percent (19.5%) of the quota.

- b. Possession limit: Fifty (50) pounds per vessel per calendar day. ~~The commercial fishery is closed on Friday of each week during this sub-period.~~
- 4. August 1 through September 14: Closed.
- 5. September 15 through October 31:
  - a. Allocation: Nineteen and a half percent (19.5%).
  - b. Possession limit: Fifty (50) pounds per vessel per calendar day. ~~The commercial fishery is closed on Friday of each week during this sub-period.~~
- 6. November 1 through December 31:
  - a. Allocation: Eleven percent (11%).
  - b. Possession limit: ~~One hundred (100)~~ **Fifty (50)** pounds per vessel per calendar day.

### **3.8 Scup**

#### **3.8.2 Commercial**

- A. Minimum size: Nine (9) inches.
- B. Seasons, quotas and possession limit: 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 ASMFC.
  - 1. January 1 through April 30 (Winter I): 50,000 pounds per vessel per calendar day, decreasing to 1,000 pounds per vessel per calendar day once 80% of the federal Winter I coastwide Scup quota has been harvested as determined by NOAA Fisheries.
  - 2. May 1 through October 31 (Summer - Fall): The State quota for scup will be divided as follows:
    - a. General Category (gear types other than floating fish traps): Forty percent (40%) of the Summer- Fall sub-period quota will be allocated to all gear types except floating fish traps and allocated as follows:
      - (1) May 1 through the Saturday before the third Sunday in September (Summer):

- (AA) Allocation: Two-thirds (2/3) of the General Category quota.
  - (BB) Possession limit: 10,000 pounds per vessel per calendar week. 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 quota has been harvested as determined by the ~~DFW~~ DEM, the fishery will close. The fishery will re-open on the third Sunday in September.
- (2) Third Sunday in September through October 31 (Fall):
- (AA) Allocation: One-third (1/3) of the General Category quota.
  - (BB) Possession limit: 10,000 pounds per vessel per calendar week. 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 quota has been harvested as determined by the ~~DFW~~ DEM, the fishery will close. The fishery will re-open at the beginning of the Winter II sub-period.
- b. Floating fish trap: Sixty percent (60%) of the Summer-Fall sub-period quota will be allocated to the floating fish trap sector.
- (1) During those years in which the federal Winter I coastwide Scup quota is completely exhausted prior to April 15, the floating fish trap quota will be available on April 15. During those years in which the federal Winter I coastwide Scup quota is not completely exhausted prior to April 15, the floating fish trap quota will be available on May 1.
  - (2) If the ~~DFW~~ DEM estimates that the Floating Fish Trap sector will not fully utilize its scup allocation prior to the end of the Summer-Fall sub-period, beginning on June 15, the ~~DFW~~ DEM 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 DFW~~ DEM will consult with the Floating Fish Trap operators 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.
  - (3) If the ~~DFW~~ DEM estimates that the Floating Fish Trap sector may have a reasonable likelihood of utilizing prior to the end of the Summer-Fall sub-period, a portion of its scup

allocation that has been transferred to the general category scup fishery, and has not as yet been used by the general category scup fishery, the ~~DFW~~ **DEM** has the authority to move the designated general category Scup fishery quota to the Floating Fish Trap sector. Any quota that was rolled over from the General Category to the Floating Fish Trap sector shall not exceed the amount that may have been transferred from the Floating Fish Trap sector to the General Category.

- (4) Floating Fish Trap Reporting Requirement: Floating fish trap operators permitted pursuant to R.I. Gen. Law § 20-5-1 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 there is non-compliance with this reporting requirement, the Floating Fish Trap operators will be notified and will default to the following program:
- (AA) April 15 through October 31: 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 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.
- (BB) May 1 through October 31: 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 operator 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
- (CC) Floating Fish trap operator: For purposes of this section, fish trap operator shall refer to a resident person or resident corporation currently issued a permit pursuant to R.I. Gen. Laws § 20-5-2. The maximum possession limit per floating 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 floating fish trap operator. While engaged in the operation of a fish trap, any licensed fisherman that may be working for or may enter into contract with the floating fish trap operator waives any individual right to possess scup pursuant to a possession limit set out in these regulations.

3. November 1 – December 31 (Winter II): 2,000 pounds per vessel per calendar day, decreasing to 500 pounds per vessel per calendar day once 70% of the federal Winter II coastwide Scup quota has been harvested as determined by NOAA Fisheries.

- C. Trawl vessel gear restrictions - minimum mesh size: Owners or operators of otter trawl vessels possessing five hundred (500) pounds or more of scup from November 1 through April 30; or two hundred (200) pounds or more of scup from May 1 through October 31, may only fish with nets that have a minimum mesh size of five (5) inches diamond (inside measure) or square mesh with a minimum length of seventy-five (75) meshes from the terminus of the net. For nets with less than seventy-five (75) mesh cod ends, the entire net will be five (5) inch minimum size diamond or square mesh.

## **3.9 Striped Bass**

### **3.9.2 Commercial**

- A. General Category:

1. Minimum size: Thirty four (34) inches or greater in total length, whether caught within the jurisdiction of this state or otherwise.
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 through May 27: Closed.
  - b. May 28 through 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 1 through September 9: Closed.

d. September 10 through 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 DEM determines that the quota will be exceeded or will not be met before the end of the fall season, ~~DFW~~ **DEM** may adjust that catch rate accordingly on or after September 15 annually.

B. Floating Fish Trap:

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

### **3.10 Summer Flounder**

#### **3.10.2 Commercial**

A. Minimum size: Fourteen (14) inches.

- B. Seasons, allocations, and possession limits: A total annual statewide quota for Summer flounder will be established for the State by the ASMFC and/or NOAA Fisheries.
1. January 1 through April 30 (Winter):
    - a. Target allocation: 54% of the annual quota.
    - b. Possession limit between January 1 and the start of the Winter sub-period of the Aggregate Landing Program, annually:
      - (1) Vessels that possess a valid RI Summer Flounder Exemption Certificate (Exemption Certificate): ~~Two hundred (200)~~ **One hundred (100)** pounds per vessel per calendar day.
      - (2) Vessels that do not possess a valid Exemption Certificate: ~~Two hundred (200)~~ **One hundred (100)** pounds per vessel per calendar day.
    - c. Possession limit during the Winter sub-period of the Aggregate Landing Program, annually:
      - (1) Vessels not permitted in the Aggregate Landing Program but which possess a valid Exemption Certificate: ~~Two hundred (200)~~ **One hundred (100)** pounds per vessel per calendar day. When 90% of the Winter sub-period quota has been harvested as determined by the ~~DFW DEM~~, the possession limit per vessel shall be one hundred (100) pounds per calendar day.
      - (2) Vessels that do not possess a valid Exemption Certificate: ~~Two hundred (200)~~ **One hundred (100)** pounds per vessel per calendar day. When 90% of the Winter sub-period quota has been harvested as determined by the ~~DFW DEM~~, the possession limit per vessel shall be one hundred (100) pounds per calendar day.
      - (3) Aggregate Landing Program: ~~One thousand three hundred (1,300)~~ **One thousand five hundred (1,500)** pounds per vessel per bi-weekly period. The bi-weekly periods shall be specified in the Aggregate Landing Permit. When 90% of the Winter sub-period quota has been harvested as determined by the ~~DFW DEM~~, the Aggregate Landing Program will terminate and the possession limit shall be one hundred (100) pounds per vessel per calendar day.
  2. May 1 - September 15 (Summer):

- a. Target allocation: 35% of the annual quota.
- b. Possession limit between May 1 and May 31, annually:
  - (1) Vessels that possess a valid Exemption Certificate: Fifty (50) pounds per vessel per calendar day. The fishery is closed Friday, Saturday, and Sunday each week.
  - (2) Vessels that do not possess a valid Exemption Certificate: Fifty (50) pounds per vessel per calendar day. The fishery is closed Friday, Saturday, and Sunday each week.

~~c. Possession limit during the Summer sub-period of the Aggregate Landing Program, annually:~~

- ~~(1) Vessels not permitted in the Aggregate Landing Program, but which possess a valid Exemption Certificate: Fifty (50) pounds per vessel per calendar day. The fishery is closed Friday, Saturday, and Sunday each week.~~
- ~~(2) Vessels that do not possess a valid Exemption Certificate: Fifty (50) pounds per vessel per calendar day. The fishery is closed Friday, Saturday, and Sunday each week.~~
- ~~(3) Aggregate Landing Program: Two hundred (200) pounds per vessel per week. When 80% of the Summer sub-period quota has been harvested as determined by the DFW the program will terminate and the possession limit per vessel shall be fifty (50) pounds per calendar day. The fishery is closed Friday, Saturday, and Sunday each week.~~

3. September 16 – December 31 (Fall):

- a. Target allocation: 11% of the annual quota.
- b. Possession limit:
  - (1) Vessels that possess a valid Exemption Certificate: One hundred (100) pounds per vessel per calendar day.
  - (2) Vessels that do not possess a valid Exemption Certificate: One hundred (100) pounds per vessel per calendar day.

C. Aggregate Landing Program:

1. Sub-periods:

- a. Winter: Beginning on the Sunday of the first full week in February through April 30 annually, or until 90% of the Winter sub-period quota has been harvested as determined by the **DFW DEM**.
  - ~~b. Summer: Beginning on June 1 through September 15 annually, or until 80% of the Summer sub-period quota has been harvested as determined by the DFW.~~
2. Eligibility: An applicant vessel shall be considered eligible for a permit to participate in the Aggregate Landing Program by demonstrating to the satisfaction of the **DFW DEM** and the Division of Law Enforcement each of the following:
    - a. The vessel, if harvesting Summer flounder from federal waters, possesses a valid federal Summer Flounder Moratorium Permit and RI Summer Flounder Exemption Certificate (Exemption Certificate);
    - b. The vessel's operator, if harvesting exclusively in State waters, holds a valid RI commercial fishing license to harvest or land summer flounder and possesses a valid Exemption Certificate;
    - c. The vessel's operator has not been assessed a criminal or administrative penalty in the past three years for a violation of this section or has more than one marine fisheries violation.
  3. Application: Application for an Aggregate Landing Program Permit shall be made on forms as prescribed by the Director.
  - ~~4. No vessel shall possess simultaneously more than one Aggregate Landing Program permit;~~
  5. 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 remainder of the sub-period or the subsequent sub-period. If for any reason a sub-period 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 sub-period upon adjudication.
  - ~~6. Any applicant who is permitted for the Winter sub-period for the Aggregate Landing Program may not participate in the Summer sub-period within the same year.~~
- D. Rhode Island Summer Flounder Exemption Certificate:
1. Application: Applicant's shall provide each of the following:

- a. 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 EEZ;
  - b. A completed notarized application;
  - c. Proof that the vessel meets the requirements set out in this section;
  - d. Provide a completed notarized waiver authorizing the Department to access records verifying that this vessel and operator meet the criteria set forth in this section; and
  - e. A copy of the vessel's U.S. Coast Guard documentation papers or state issued boat registration certificate proving ownership of the vessel.
2. Eligibility: ~~DFW~~ **DEM** will issue an Exemption Certificate for a vessel if the owner of the vessel or his/her representative applies to ~~DFW~~ **DEM** prior to January 1, 1997, for the issuance of such a certificate and demonstrates to the satisfaction of the Director that:
  3. Transfer of an Exemption Certificate: An Exemption Certificate issued by the ~~DFW~~ **DEM** 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: An Exemption Certificate 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 an Exemption Certificate 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 an Exemption Certificate must provide proof to the satisfaction of the ~~DFW~~ **DEM** that the applicant vessel is replacing a vessel and that said certificate is only applicable to the vessel for which the Exemption Certificate has been transferred.

## 3.15 Atlantic herring

### 3.15.1 Commercial

- A. Season: The season for Atlantic herring begins annually on January 1. When the Atlantic herring quota has been harvested as determined by NOAA Fisheries, the season will close.
- B. Possession limit: 2,000 pounds per vessel per day, unless the vessel holds a RI State Waters Atlantic Herring Fishing permit.
- C. Rhode Island State Waters Atlantic Herring Fishing Permit: A permit from ~~DFW~~ DEM is required for vessels engaged in the fishing and/or processing of over 2,000 pounds of Atlantic herring per day in Rhode Island state waters.
  - 1. Issuance of this permit is contingent on fishing vessel captains attending a meeting with ~~DFW~~ DEM staff where they are required to give proof that:
    - a. The vessel and its captain(s) have obtained all necessary and applicable authorizations to fish for Atlantic herring in RI waters (license, endorsements(s), and vessel declarations);
    - b. The vessel captain(s) have provided a valid email address to ~~DFW~~ DEM at which the captain can access while fishing for the purpose of receiving advisories pertaining to river herring;
    - c. The vessel captain(s) have received from ~~DFW~~ DEM a chart of fixed commercial fishing gear locations in Rhode Island waters and will have said chart in his/her possession while engaged in the fishing and/or processing of Atlantic Herring in RI waters;
    - d. The vessel captain(s) have received from ~~DFW~~ DEM a copy of all applicable regulations governing the commercial harvest of Atlantic herring in Rhode Island waters.

## 3.20 Cod

### 3.20.2 Commercial

- A. Minimum size: Nineteen inches (19”), whether caught within the jurisdiction of this State or otherwise.
- B. Fishing year: The commercial Cod fishery shall operate on a May 1 through April 30 fishing year.
- C. Possession limit: 1,000 pounds per vessel per calendar day for any vessel fishing in state waters. The possession limit may be modified on the basis of a RI state water cod quota as set by ~~DFW~~ DEM, which shall be equal to 1% of the federal

Georges Bank cod annual catch limit (ACL) for the given fishing year. When 90% of the state water quota has been harvested as determined by the ~~DFW~~ **DEM**, the possession limit will decrease to 75 pounds of cod per vessel per calendar day for the remainder of the fishing year.

## 3.22 Menhaden

### 3.22.2 Commercial

- A. Menhaden Management Area: Narragansett Bay in its entirety is designated a Menhaden Management Area pursuant to R.I. Gen. Laws § 20-4.1-1. This area shall include the east and west passages of Narragansett Bay, Mt. Hope Bay, and the Sakonnet River, and be bordered on the south by a line from Bonnet Point to Beavertail Point to Castle Hill Light. The southern boundary further extends from Land's End to Sachuest Point and then to Sakonnet Light. The following regulations govern all commercial menhaden operations conducted in the Menhaden Management Area (Management Area).
1. Opening and closure of fishery:
    - a. Fishery opening - possession limits:
      - (1) Biomass Floor: On an annual basis in the spring, the DEM shall conduct regular estimates of the standing stock of menhaden present in the Management Area utilizing approved scientific monitoring methods. On the basis of those estimates, ~~DFW~~ **DEM** shall open the commercial fishery at an initial possession limit of 120,000 pounds per vessel per calendar day when the estimated weekly standing stock reaches 2,000,000 pounds.
- C. Episodic Event Set Aside Program:
1. After the State's quota has been reached, if RI is approved to participate in the Episodic Event Set Aside Program for Menhaden, as established by the ASMFC, the landing limit for menhaden will be 120,000 pounds per vessel per day for vessels associated with directed fisheries for Menhaden, until the Set Aside quota has been exhausted, as determined by the ASMFC and/or the DEM, at which time the program will end and the directed fishery will close. Vessels that target and land menhaden in RI under this program must harvest only from RI waters and, if operating in the Management Area, must adhere to all of the provisions as specified in these regulations.
  2. Reporting Requirements:
    - a. Any person intending to engage in the commercial menhaden fishery under the Episodic Event Set Aside Program must notify the

DLE at (401) 222-3070 prior to taking or possessing menhaden. At the time that a fisher advises the DLE of his/her intent to harvest menhaden, the DLE shall notify said fisher of any modification to the possession limit for menhaden that is applicable to operations conducted in the Management Area.

- b. Each person engaged in the commercial menhaden fishery shall contact the **DFW Division of Marine Fisheries** at (401) 423-1940 at the end of each daily trip or within four hours thereof to report the amount of menhaden landed by the fisher in pounds. These menhaden-specific reporting requirements are in addition to all other existing commercial fishing reporting requirements as set forth in the RI Marine Fisheries regulations.
  3. Vessels not associated with directed fisheries for menhaden may continue to harvest and land in RI up to 6,000 pounds per vessel per day as bycatch. Such vessels are not subject to the provisions of §§ 3.22.2(A)(1)(a)((2)) and ((3)) of this Part, but are subject to the provisions of § 3.22.2(A) of this Part with regard to operations conducted in the Management Area, and are subject to all existing commercial fishing reporting requirements as set forth in the RIMFR.
  4. The Episodic Event Set Aside Program will end on November 1 annually or when the set aside quota has been harvested, whichever first occurs.
- D. Prohibition on the harvesting of menhaden for reduction processing: The taking of Menhaden for reduction (fish meal) purposes is prohibited in Rhode Island waters. A vessel will be considered in the reduction (fish meal) business if any portion of the vessel's catch is sold for reduction.
- E. No person may transfer or attempt to transfer at sea, from one vessel to another, any finfish identified in these regulations.

### **3.23 Monkfish**

#### **3.23.2 Commercial**

- A. Minimum size: Seventeen inches (17") total length or eleven inches (11") tail length whether caught within the jurisdiction of this State or otherwise.
- B. Fishing year: The commercial monkfish fishery shall operate on a May 1 through April 30 fishing year.
- C. Possession limit:
  1. Non-federally permitted RI licensed vessel: 700 pounds tail weight or 2,037 pounds whole weight per vessel per calendar day. Whole weight is defined as the weight of monkfish that are gutted (i.e. stomach, liver, and

other entrails removed) and have the head and tail attached. In SAFIS landing monkfish in the “whole” is reported using the grade “gutted, head on, tail on”.

- a. The possession of monkfish livers may not exceed the number of gutted-fish and tails combined.
  - b. The possession of monkfish heads may not exceed the number of gutted-head-off-fish and tails combined.
2. 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 3% of the federal Southern Management Area (SMA) Total Allowable Landings (TAL) as specified by NOAA Fisheries. When 2% of the SMA TAL has been harvested as determined by the ~~DFW~~ **DEM**, the possession limit will decrease to 50 pounds tail weight or 166 pounds whole weight per vessel per calendar day for the remainder of the fishing year.

## 3.27 Spiny dogfish

### 3.27.1 Commercial

- A. Seasons, allocations, and possession limit: RI is currently designated as a state that is part of the Northern region. A Northern region possession limit and quota for spiny dogfish will be established annually by the ASMFC. The Northern region quota for spiny dogfish shall be the most recent allocation by the ASMFC, which is currently set at 58% of the coastwide quota.
  1. Season: May 1 until April 30 of the following year.
  2. Possession limit: ~~5,000~~ **6,000** pounds per vessel per calendar day. When notified that the quota in the Northern region has been harvested, or projected to be harvested, as determined by the NOAA Fisheries or the ASMFC, the ~~DFW~~ **DEM** shall close the fishery for the remainder of the designated period.
  3. ~~DFW~~ **DEM** is hereby authorized to enter into agreements with the other Northern Region States for the purpose of establishing seasons and possession limits governing the taking of spiny dogfish, and may make adjustments as deemed necessary to comply with said agreements. ~~DFW~~ **DEM** will consult with the Rhode Island state-water spiny dogfish fishers prior to negotiating the subject agreements.