

for summer flounder. The Department is proposing to ASMFC that the New York 2004 recreational harvest projection for summer flounder be based on an average of the estimated harvest for 2001-2003, rather than on 2003 alone. New York's summer flounder regulations were essentially unchanged over this three year period, and the recreational harvest estimate, which is derived from a federal survey that is not statistically reliable at the individual state level, has fluctuated significantly over the period. For this reason, the Department has chosen to comply with the FMP by basing its harvest projection on a more reliable and stable three year average of harvest estimates, resulting in a 20% reduction requirement for 2004.

The FMP for black sea bass calls for annual adjustments to common coastwide regulations that are calculated to hold coastwide harvest within the allowed annual quota. For 2004, a two-week closure between September 1 and October 31 is required, with a recommended closure of September 6 through September 21. The emergency rule changes New York's closure period from September 1 through September 16 to September 23 through Oct. 7. This change is required to minimize the economic impact that would otherwise occur due to concurrent summer flounder and black sea bass closures on and immediately following September 6.

The promulgation of this regulation on an emergency basis is necessary in order for the Department to maintain compliance with the FMPs for summer flounder, scup, and black sea bass and to avoid closure of these fisheries and the economic hardship that would be associated with such closure.

Subject: Regulation of the recreational harvest and possession of marine fish species (summer flounder, scup, and black sea bass) in New York's marine district.

Purpose: To control the recreational harvest and possession of marine fish species (summer flounder, scup, and black sea bass) consistent with conservation requirements identified in regional FMPs.

Text of emergency rule: Section 40.1(f) is amended as follows:

40.1(f) Table A - Recreational Fishing.

Species	Open Season	Minimum Length	Possession Limit
Striped Bass (except the Hudson River north of the George Washington Bridge)	Apr 15 - Dec 15	28" TL (Total Length) *	1
Red Drum	All year	No minimum size limit	No limit for fish less than 27" TL Fish greater than 27" TL shall not be possessed
Tautog	Oct 1 - May 31	14" TL	10
American Eel	All year	6" TL	50
Pollock	All year	19" TL	No limit
Haddock	All year	21" TL	No limit
Atlantic cod	All year	23" TL	No limit
Summer flounder	[All year] May 15 - Sept. 6	17" TL	[7] 3
Yellowtail Flounder	All year	13" TL	No limit
Atlantic Sturgeon	No possession allowed		
Spanish Mackerel	All year	14" TL	15
King Mackerel	All year	23" TL	3
Cobia	All year	37" TL	2
Monkfish (Goosefish)	All year	21" TL	No limit
		14" Tail Length #	
Weakfish	All year	16" TL 10" Fillet length+ 12"Dressed length**	6
Bluefish	All year	No minimum size limit	10
Winter Flounder	Third Saturday in March to June 30 and Sept. 15 to Nov 30	11" TL	15
Scup (porgy)	[All year] June 16 - Oct. 17 and Nov. 1 - Nov. 30	[10"] 11" TL	[50] 20
Black Sea Bass	[Jan 1 -Sept. 1 and Sept. 16 - Nov 30] Oct. 8 - Sept. 23	12"	25
American Shad	All year	No minimum size limit	5

Hickory Shad	All year	No minimum size limit	5
Large & Small Coastal Sharks ##, ###	As per Title 50 CFR, Part 635###	As per Title 50 CFR, Part 635###	As per Title 50 CFR, Part 635###
Pelagic Sharks ++, ###	As per Title 50 CFR, Part 635###	As per Title 50 CFR, Part 635###	As per Title 50 CFR, Part 635###
Prohibited Sharks ***, ###	No possession allowed		

* Total length is the longest straight line measurement from the tip of the snout, with the mouth closed, to the longest lobe of the caudal fin (tail), with the lobes squeezed together, laid flat on the measuring device.

The tail length is the longest straight line measurement from the tip of the caudal fin (tail) to the fourth cephalic dorsal spine (all dorsal spines must be intact), laid flat on the measuring device.

+ The fillet length is the longest straight line measurement from end to end of any fleshy side portion of the fish cut lengthwise away from the backbone, which must have the skin intact, laid flat on the measuring device.

** Dressed length is the longest straight line measurement from the most anterior portion of the fish, with the head removed, to the longest lobe of the caudal fin (tail), with the caudal fin intact and with the lobes squeezed together, laid flat on the measuring device.

Large and Small Coastal Sharks include those shark species so defined as in Table 1 to Appendix A to Part 635 of Title 50 Code of Federal Regulations.

++ Pelagic sharks include those species so defined as in Table 1 to Appendix A to Part 635 of Title 50 Code of Federal Regulations.

*** Prohibited sharks include those species so defined as in Table 1 to Appendix A to Part 635 of Title 50 Code of Federal Regulations.

Applicable provisions of the following are incorporated herein by reference: 50 CFR Part 635-Atlantic Highly Migratory Species, final rule as adopted by U.S. Department of Commerce as published in the Federal Register, Volume 64, Number 103, pages 29135-29160, May 28, 1999. A copy of the federal rule incorporated by reference herein may be viewed at: New York State Department of Environmental Conservation, Bureau of Marine Resources, 205-S North Belle Meade Road, East Setauket, New York 11733.

This notice is intended to serve only as a notice of emergency adoption. This agency intends to adopt the provisions of this emergency rule as a permanent rule, having previously published a notice of emergency/proposed rule making, I.D. No. ENV-19-04-00003-EP, Issue of May 12, 2004. The emergency rule will expire September 18, 2004.

Text of emergency rule and any required statements and analyses may be obtained from: Alice Weber, Department of Environmental Conservation, Bureau of Marine Resources, 205 S. North Belle Meade Rd., East Setauket, NY 11733, e-mail: amweber@gw.dec.state.ny.us

Regulatory Impact Statement

1. Statutory authority:

Environmental Conservation Law (ECL) Sections 13-0340-b, 13-0340-e and 13-0340-f authorize the Department of Environmental Conservation (DEC or Department) to establish by regulation, open season, size, catch limits, possession and sale restrictions and manner of taking for summer flounder, scup and black sea bass.

2. Legislative objectives:

It is the objective of the above-cited legislation that DEC manage marine fisheries to optimize resource use for commercial and recreational harvesters consistent with marine fisheries conservation and management policies and interstate FMPs.

3. Needs and benefits:

Pursuant to § 13-0371 of the ECL, New York State participates in the Atlantic States Marine Fisheries Compact administered through the Atlantic States Marine Fisheries Commission (ASMFC) to promote cooperative utilization of marine fish species. The principal mechanism for implementation of cooperative management of migratory fish are the ASMFC's Interstate Fisheries Management Plans for individual species or groups of fish. The Fisheries Management Plans (FMPs) are designed to promote the long term health of these species, preserve resources, and protect the interests of both commercial and recreational fishers. Under the provisions of the Atlantic Coastal Fisheries Cooperative Management Act (ACFCMA), ASMFC determines if states have timely implemented provisions of FMPs with which they are required to comply. If ASMFC determines a state to be in non-compliance with an FMP, it so notifies the U.S. Secretary of Commerce. If the Secretary concurs in the non-compliance determination, the Secretary promulgates and enforces a complete prohibition on all fishing for the subject species in the waters of the non-compliant state until the state comes into compliance with the FMP.

ECL Sections 13-0340-b, 13-0340-e and 13-040-f, which authorize the adoption of regulations for the management of summer flounder, scup, and black sea bass, provide that such regulations must be consistent with the