

quirements of 42 U.S.C. § 11432(g)(3)(E)(i). 42 U.S.C. § 11432(g)(3) only discusses local educational agency requirements, not state educational agency requirements. Thus, 42 U.S.C. § 11432(g)(3)(E)(i) only requires that the homeless child or youth continue to attend the school that he or she is enrolled pending resolution of the enrollment dispute at the local educational agency/school district level, not the state educational agency/SED level. Additionally, the United States Department of Education's Non-Regulatory Guidance of the Education of Homeless Children and Youth Program ("Non-Regulatory Guidance") states that the homeless child or youth must continue to be enrolled in the school pending the local educational agency's/school district's resolution of the enrollment dispute (see, Non-Regulatory Guidance, Section G-5, p. 14). Consequently, no change needs to be made to this amendment.

Department of Environmental Conservation

EMERGENCY/PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Recreational Harvest and Possession of Marine Fish Species

I.D. No. ENV-17-05-00004-EP

Filing No. 391

Filing date: April 8, 2005

Effective date: April 8, 2005

PURSUANT TO THE PROVISIONS OF THE State Administrative Procedure Act, NOTICE is hereby given of the following action:

Action taken: Amendment of Part 40 of Title 6 NYCRR.

Statutory authority: Environmental Conservation Law, sections 11-0303, 13-0340, 13-0340-b, 13-0340-e and 13-0340-f

Finding of necessity for emergency rule: Preservation of general welfare.

Specific reasons underlying the finding of necessity: Pursuant to section 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.

ECL sections 11-0303, 13-0340, 13-0340-b, 13-0340-e and 13-040-f, which authorize the adoption of regulations for the management of striped bass, bluefish, summer flounder, scup, and black sea bass, provide that such regulations must be consistent with the FMPs for these species adopted by ASMFC. Under the FMPs for striped bass, bluefish, summer flounder, and scup, ASMFC assigns each state an annual harvest target or quota. In addition, a projection is made for each state as to its expected harvest. ASMFC recently amended the FMPs for striped bass, bluefish, summer flounder, scup, and black sea bass by adopting annual quota changes and recreational harvest projections. These FMP amendments authorize states to relax certain existing regulations pertaining to minimum size limits, possession limits and open seasons.

The promulgation of this regulation on an emergency basis is necessary in order for the Department to authorize appropriate utilization of resources consistent with the FMPs for striped bass, bluefish, summer flounder, scup, and black sea bass. Failing to make changes to summer flounder, scup, striped bass, and bluefish and black sea bass recreational fishing regulations would place New York's anglers at a disadvantage with neighboring states' anglers. The department is adopting these changes by emergency rule making in order to effectively give recreational anglers relief during 2005 from unnecessarily restrictive regulations. Moreover, these

amendments will provide economic relief to businesses that depend on the recreational fishing industry.

Subject: Regulation of the recreational harvest and possession of marine fish species (striped bass, bluefish, 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 consistent with conservation requirements identified in regional FMPs and the needs of the recreational fishing industry.

Text of emergency/proposed rule: Part 40 of Title 6 of the Official Compilation of New York Codes, Rules and Regulations, entitled "Marine Fish," is amended to read as follows:

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	Licensed Party/ Charter Boat anglers 28" TL " All other anglers 28" to 40" TL >40" TL (Total Length) *	2 1 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	[May 15 - Sept. 6] Apr. 29 - Oct. 31	[18"] 17.5 TL	[3] 5
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
Moonfish (Goosefish)	All year	21" TL 14" Tail Length #	No limit
Weakfish	All year	16" TL 10" Fillet length + 12" Dressed length**	6
Bluefish	All year	No minimum size limit for the first 10 fish; 12" TL for the next 5 fish.	[10] 15, no more than 10 of which shall be less than 12" TL.
Winter Flounder	Third Saturday in March to June 30 and Sept. 15 to Nov. 30	11" TL	15
Scup (porgy)	July 1 - Aug. 31	10.5" TL	25
Licensed Party/ Charter Boat anglers	Sept. 1 - Oct. 31	10.5" TL	60
Scup (porgy)	[June 16 - Oct. 17 and Nov. 1 - Nov. 30] July 1 - Oct. 31	[11"] 10.5" TL	[20] 25
All other anglers	[Jan. 1 - Sept. 7 and Sept. 22 - Nov. 30] Jan. 1 - Nov. 30	12" TL	25
Black Sea Bass			
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.