

**Report on Eligibility and Related Issues, Striped Bass Commercial Harvest Permits  
Work Group on Striped Bass Commercial Harvest Permits  
Marine Resources Advisory Council**

**Introduction**

This report contains the findings and recommendations of the Marine Resources Advisory Council's (the "Council") Work Group on Striped Bass Commercial Harvest Permits regarding two issues: 1) should new entrants be allowed into New York's commercial striped bass fishery for the first time since 1995? and 2) if new entrants are to be allowed, what mechanisms, procedures, limits etc. regarding new entrants should be instituted to expand opportunities to participate in this fishery while at the same time safeguarding the conservation and fishery socioeconomic goals and objectives of the State's striped bass management program? The fundamental recommendation of the Work Group is that the striped bass commercial harvest permit be made transferable by sale or other arrangement, with certain restrictions and requirements. The specific recommended restrictions are found on Pages 4 & 5 of the report. This report and its recommendation were accepted and endorsed by the Marine Resources Advisory Council at its meeting on 22 September 2009.

The Work Group was established by the Council at its 18 November 2008 meeting. Its initial charge was to review DEC's striped bass commercial tag program and to make recommendations on whether and how these tags should be made transferable. The Work Group's recommendations on tag transferability were presented to the Council at two separate meetings (12 May 2009 and 14 July 2009). Based on the Work Group's recommendations and ensuing Council discussion, the Council adopted final recommendations on tag transferability. These are described in Attachment A to this report.

At its 12 May 2009 meeting, the Council directed the Work Group to *additionally* take up the issues addressed in this report: whether new striped bass special harvest permits should be issued and, if new permits should be issued, how and under what, if any, restrictions. This was not the first time that the Council had addressed these issues. In 2002, it made recommendations to DEC on conditions that would warrant issuance of new striped bass commercial harvest permits and how those new permits should be issued. These recommendations, which were never acted upon by DEC, are presented in Attachment B to this report. The recommendations contained in the present report supersede these earlier recommendations of the Council.

**Background**

DEC began issuing mandatory striped bass commercial harvest permits in 1984 to those seeking to commercially fish the state's waters for striped bass. Permits (and tag allocations) are annually issued to persons who meet three qualifications: 1) possession of a valid New York State commercial foodfish license; 2) possession of a striped bass commercial harvest permit in 1984, 1985, 1990, 1991, 1992, 1993, 1994, or 1995 and 3) demonstration through federal or New York State income tax records that at least 50 % or more of his/her earned income resulted from the direct participation in the harvest of marine fish, shellfish, crustaceans or other marine biota in any one year from 1994 through 2004. Those who meet all three criteria are issued full-share tag allocations. Those applicants meeting the first two of these criteria but not the income threshold are issued partial-share tag allocations. Under these restrictive eligibility requirements, the number of striped bass permits issued has continued to

decline through attrition each year since at least 2002, when 554 permits were issued. In 2008, 489 permits were issued. No new striped bass commercial harvest permits have been issued by DEC since 1995.

DEC issues serialized tags to individuals holding striped bass commercial harvest permits. The tag program began in 1990, when the commercial striped bass fishery in New York partially re-opened after having been completely shut down in 1985 because of PCB contamination and in response to the requirements of the Atlantic Striped Bass Conservation Act, which Congress passed in 1984 to help rebuild the declining population of striped bass along the U.S. East Coast. Tags are issued in two categories - - full-share and partial-share. Tag allocations to individual permit-holders are achieved by first dividing New York's annual commercial striped bass harvest quota by the total number of permit-holders. A partial-share permit-holder receives 20% of this individual allocation. The full-share individual quota is derived by subtracting the partial-share quota from the total from the total number of tags to be issued and then dividing the result by the number of full-share permit-holders. All partial-share permittees receive the same number of tags and all full-share permittees receive the same number of tags. Of the 489 striped bass permits issued in 2008, 378 qualified for a full-share allocation of tags (225 tags) and 111 qualified for a partial-share allocation (36 tags).

All striped bass harvested for commercial purposes in New York must carry an individual tag. Over the past several years, approximately 10-15% of the tags annually issued to permit-holders have been returned unused to the Department.

Beginning in 2000, and thereafter at five year intervals, each striped bass commercial harvest permit-holder in the full-share category must file documentation with DEC demonstrating that he/she continues to meet the income threshold required for a full-share permit (i.e., "requalify"). Full-share permittees who cannot or fail to provide this documentation will henceforth receive a partial-share permit and tag allocation. In 2000 and 2005, the criterion used in this requalification was 50% of earned income from the harvest and sale of fish or fishing in any one of the immediately preceding three years. It is anticipated that DEC will adopt regulations prior to 2010 that will set the following as the income qualification to retain a full-share allotment of tags: at least \$15,000 of documented income from commercial fishing or fishing in any one of the preceding three years. The impact of this first-time requalification process on the relative proportions of full- and partial-share striped bass tag allotments is likely to be considerable. It is possible that a considerable number of full-share allotment holders will be unable to meet the new requalifying income criteria and will have their tag allotments reduced to partial shares. Partial-share allotment holders do not face an income requalification requirement.

### **Reasons to Expand Eligibility for Striped Bass Permits**

From a historic nadir in the mid-1980's, and under strict and coordinated interstate management control, the abundance of striped bass along the U.S. East Coast rose steadily to a historic high in 2003. The stock was declared fully restored in 1995 and it is presently above the several biological reference points used to identify management goals and objectives for the species. As striped bass became and remained abundant, to so strictly limit the right to commercially harvest striped bass from New York waters led to increasing disgruntlement within the commercial fishing industry. Bona fide commercial fishermen, including some with a past involvement in the commercial striped bass fishery but who did not have a striped bass permit in one of the qualifying years (above), felt that it was unfair and inappropriate to allow a closed class of permittees to solely reap the economic benefit of the striped bass's resurgence.

Additionally, younger fishermen who have not been fishing long enough to have possessed a striped bass permit in one of the qualifying years, are now prevented from participating in the State's commercial striped bass fishery. The ranks of commercial fishermen in New York are ageing, and for a number of reasons: high costs and relatively low fish prices; the reshaping of New York's maritime economy in ways that emphasize other industries, especially those associated with recreation and tourism; and the increasingly tight limits placed on fishing activities and allowable catches. These and other factors all serve to deter young people from pursuing a career as a commercial fisherman. In some fisheries, and that for striped bass is one, there is an additional factor: entry limitations that favor those who were in the fishery on certain control dates and strongly disfavor those fishermen who were not, especially the young. New York's marine commercial fisheries have always been conducted on a family-basis, often with generation succeeding generation within a single family. The current restrictions on new entrants in the striped bass fishery, which essentially constitute a moratorium on the issuance of new permits, run directly counter to this tradition.

### **Reasons to Limit Eligibility for Striped Bass Permits**

Management of New York's commercial striped bass fishery has operated since 1995 under an annual harvest quota set by the Atlantic States Marine Fisheries Commission. It appears that it will continue to do so for the foreseeable fishery. The presence of a fixed catch quota presents a strong rationale for limiting participation in this fishery. To lift all restrictions on access to the fishery would precipitate a large influx of new participants. This, in combination with the fixed catch limit would reduce individual economic rents for each individual participant to the vanishing point.

Many of the current permit-holders have participated in New York's commercial striped bass fishery for decades, through good years and lean years. They weathered the harvest moratorium of the late 1980's and have participated in the fishery every year since it re-opened in 1990. Up to a point, it is fair that the economic interests of the current participants in the commercial striped bass fishery should be protected against the effects of a flood of new entrants.

### **How Many Striped Bass Permits Should Be Issued?**

There is no ready or readily-defensible answer to this question that rests on universally accepted first principles, whether of socio-economics or science. As long as New York operates under a fixed annual harvest quota, the number of permits should probably be keyed in some way to the amount of the quota. That is, generally speaking, more permits should be issued when the quota is large than when it is smaller. However, it is clear that not all permits, nor permit-holders, are alike. Some permit-holders use most of their tag allotments; some do not. Within a fixed number of permits, it is extremely difficult to predict what the pattern of tag use will be. It does appear that approximately 10-15% of the tags issued are not used every year. This fraction, however, may itself depend on the demographic profile of the permit-holders. A fishery dominated by young, motivated full-time fishermen would very likely use a greater fraction of the tags issued than a fishery peopled primarily with older, retired and perhaps less motivated individuals.

In many fishery management programs in which a fixed number of licenses/permits are to be issued, managers simply opt to start with the number of licenses/permits that are issued at that moment. This number is adjusted upwards or downwards based on the subsequent

performance of the fishery and the balancing of the need to allow new entrants with the need to protect the interests of historic participants.

### **Who Should Be Allowed to Possess a Striped Bass Permit?**

Licensee eligibility criteria are part and parcel of any fisheries management program in which the number of licenses or participants is limited. The fewer the number of licenses available, the more weighty becomes the decision as to who gets a license/permit and why. The fixed number of licenses and the other limits on harvest that are often part of a fisheries management program (catch limits, season closures, etc) primarily address the biological conservation concerns at which the management program is directed. These conservation concerns are largely indifferent to the question of who is actually doing the fishing. In this setting, determining who can get a permit and who cannot is more a question of establishing relative socioeconomic fairness in the allocation of licenses.

In the case of a specialized permit such as that for striped bass, the Work Group believes that the current requirement that all permit-holders must also, and first, possess a State commercial foodfish license makes sense. The foodfish is the license that allows individuals to catch finfish from the State's waters for subsequent commercial sale, and the striped bass is a finfish.

Beyond possession of the foodfish license, however, the Work Group believes there is not compelling *a priori* state interest in the question of who secures a striped bass permit and who doesn't. A tremendous amount of time and energy can be spent in an attempt to develop permit criteria that attempt to discriminate the most deserving, the most "qualified" individuals to acquire this permit from among a wide and disparate pool of potential applicants. Inevitably, those who secure a permit under such a sifting process will praise the system and the criteria it uses; those who do not qualify will damn the system and its qualification criteria as unfair, self-serving or worse.

In light of this, the Work Group feels that those current possessing the striped bass permit should be allowed to retain it upon annual application. Those permit-holders with a full-share allocation of tags who can document sufficient income derived from fishing should be able to retain a full-share tag allocation. Those who can't should henceforth receive only a partial share. Exceptions to this permit and tag allocation retention position would arise solely as a result of a permit-holder exceeding the tag transfer allowances recommended in the committee's report on tag transfer.

The Work Group believes that it is now appropriate to allow new entrants into New York's commercial striped bass fishery. In light of the above, and mindful of the limited staff available to DEC to run its striped bass management and permit programs, we believe that striped bass commercial harvest permits should be made saleable. New entrants into the fishery would be those choosing to purchase or otherwise obtain a permit from an existing permit-holder.

Specific recommendations follow.

### **The Proposal**

A. The Work Group recommends that the number of striped bass commercial harvest permits extant at any one time be limited to no more than 494, the number issued in 2008. This number would be allowed to decline by attrition to 250. Should the number of active licenses in a given year fall below 250, the Department should develop a permit allocation system, not associated

with the permit transfer privilege describe below, that would build the number of permit issued back to 250 in the following year. That is, the number 250 is to serve as a "floor" on the number of such permits.

B. The Work Group recommends that the striped bass commercial harvest permit be made transferable. This would mark the first instance in which a State commercial fishing license would, itself, be widely transferable. Presently, a corporation holding a commercial fishing license can be purchased and the license goes to the new owner along with the corporation's other assets. Several commercial fishing licenses can pre-assigned by the permit-holder to be transferred to an immediate family member upon the license-holder's demise. That family member is then free to transfer that license, once, to any other individual. The transferability recommended here for the striped bass commercial permit is broader.

The following limits should be placed on the transfer of striped bass permits:

1. The transferee must possess a State commercial foodfish license
2. The transferee of a permit bearing a full-share tag allocation must meet the income qualification for the initial allocation of a full-share tag allotment (this is likely to be a average \$15,000 annual income from the direct harvest and sale of fish over the prior three years)
3. The transferee of a permit bearing a partial-share tag allocation must fish under that allocation for the balance of the calendar year in which the transfer takes place. If the transferee can meet the income qualification described in #2 (above), he/she can increase the allocation to a full-share in the following year.
4. Having transferred his/her permit, the transferor may not acquire another permit by transfer for at least three years. The transferee may not themselves transfer the permit in question for three years.
5. A corporation cannot acquire an individual permit by transfer.
6. An individual acquiring a permit by transfer cannot hold shares in a corporation that itself has a striped bass permit
7. Proposed permit transfer information is to be provided to DEC a minimum of 6 weeks prior to the actual transfer.
8. Tags associated with the transferred permit are to be returned to DEC for reissuance to the transferee.
9. Once a permit is transferred, the responsibility for adhering to any and all regulations, stipulations, etc. associated with that permit lies with the transferee, and the transferor is absolved of same.

## Attachment A.

### Final Recommendations of the Marine Resources Advisory Council on Transferability of Commercial Striped Bass Tags

Recommendation: DEC should make the commercial striped bass tag transferable under the following limitations and guidelines:

- The tag recipient must possess the special striped bass commercial harvest permit.
- A full-share permittee may transfer tags only to another full-share permittee, not to a partial-share permittee. A partial-share permittee may transfer tags to either a full- or a partial-share permittee.
- A full-share permittee may transfer tags in one of the following amounts, only: 100; 150; 200 or his/her full annual tag allotment. A partial-share permittee may transfer either one-half or his/her entire annual tag allotment, only.
- A tag transfer is effective for one fishing season, only.
- A full-share permittee who transfers all his/her tags in any 5 years will have his/her allocation reduced to a partial share the following year. A partial-share permittee who transfers all his/her tags in any 5 years will forfeit his/her striped bass commercial harvest permit.
- The number of tags that any single permit-holder could accumulate by transfer in a given fishing season should be limited. Recommended limits are: for a full-share permit-holder 5% of the total number of tags distributed that year; for a partial-share permit-holder, 5% of the total number of tags distributed to all partial-share permit-holders that year.
- Any permittee transferring tags must complete and submit to DEC a form that identifies the recipient of the tags and the tag numbers.
- These tag transfer measures should be re-examined three (3) years after they are first implemented to assess their effectiveness. They may be renewed, modified or not renewed based on that assessment.

Attachment B.

**Report, Striped Bass and Fluke Special Harvesting Permits Work Group  
Accepted/Adopted on 16 July 2002**

Councilor Freierman distributed to the Council the final report and recommendations of the Council Work Group that she had chaired. The Work Group consisted of Councilors Freierman, Jordan, and McBride and DEC staff person Mr. Victor Vecchio. Ms. Freierman noted that the recommendations of the report enjoyed the endorsement of all Work Group members, although the report does contain separate statements on issues related to those in the report, giving the personal views of Ms. Freierman and Mr. Jordan on these issues.

The charge to the Work Group was: 1) to identify the conditions and circumstances that should trigger a decision to allow new entrants into the commercial striped bass and fluke fisheries and 2) to recommend how any new entrants should be allowed to get permits, i.e., qualifications, number of new permits, etc.

The report's findings and recommendations on striped bass recommendations follow.

The committee is unanimous in its finding that current permit holders do not believe they have adequate access to a recovering resource and that the number of tags per permit should increase before new permits are issued. Following are recommended guidelines for the future issuance of striped bass permits in New York State:

*Striped Bass*

To retain a permit:

1. A control date in 2003 will be set. All striped bass permits in effect on this date that have been renewed by the holder in five of the last seven years will be considered as existing permits.
2. After the control date, all existing permits identified by #1, above, will then be eligible for annual renewal. A permit must be renewed each year or it expires.
3. The number of existing permits will be allowed to decline through attrition to 550 (the number extant in 1994 + 2).
4. Once the number of existing striped bass permits reaches 550, and New York's annual commercial striped bass quota reaches 1,059,900 lbs. (average annual commercial striped bass landings in New York over the period 1972-1979), new permits may be issued.

To receive a new permit:

1. Applicant must possess a valid NYS commercial foodfish license.
2. Applicant must demonstrate through tax records that 50% of his/her earned income is from direct participation in harvesting fish, shellfish, crustaceans, or other marine biota in any one of the previous three years.

The priority for issuance of new striped bass permits will be based on the age of one's foodfish license (the lower the license number, the higher the priority).

Part-time permits: If all applicants who meet the above requirements have been issued permits and the number of licenses remains under 550, part-time permits can be issued to those who hold a foodfish license but don't meet the income eligibility requirements. Priority of part-time permits will be based upon the age of one's foodfish license.

Striped bass permits should only be passed to members of a permit-holder's immediate family as per Environmental Conservation Law Section 13-0328(5).

The Council subsequently adopted an additional recommendation relative to striped bass commercial harvest permits at its 04 March 2003 meeting, to wit: that should the number of extant striped bass permits fall below 250, new permits should be issued until the total extant reaches 250, regardless of the magnitude of New York's annual striped bass commercial harvest quota at the time. That is, 250 permits is set as a "floor".