RHODE ISLAND GOVERNMENT REGISTER

PUBLIC NOTICE OF PROPOSED RULEMAKING

DEPARTMENT OF ENVIRONMENTAL MANAGEMENT

Title of Rule: Aggregate Program for Summer Flounder and Black Sea Bass

Rule Identifier: 250-RICR-90-00-23

Rulemaking Action: Proposed Adoption

Important Dates:

Date of Public Notice: February 21, 2023
Hearing Date: March 6, 2023
End of Public Comment: March 23, 2023

Rulemaking Authority:

R.I. Gen. Laws § 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.

Summary of Rulemaking Action:

1. Proposal #1 (Division proposal):

a. Adopt new rule “Part 23 - Aggregate Program for Summer Flounder and Black Sea Bass” in conjunction with allowing the pilot program rules “Part 12 – Research Pilot Aggregate Program for Summer flounder and Black sea bass” to remain expired (i.e., do not extend term of pilot program into 2023).

Rationale: The pilot program has been in effect for 4 full years with adequate data obtained to determine to potential effects of a full program available to all eligible license holders.

b. Seasons:

· Winter I: Jan. 1 – April 30 (no change proposed)

· Summer/Fall: May 1 – Dec. 31 (no change proposed from pilot program)

c. Possession limits:

· Winter I:

o Summer flounder: Four thousand (4,000) pounds per vessel per bi-week (no change proposed)

· Summer/Fall:

o Summer flounder: The weekly possession limit will be equal to the daily limit multiplied by seven (7) (no change proposed

from pilot program)

o Black sea bass: The weekly possession limit will be equal to the daily limit multiplied by five (5) (no change proposed from pilot program)

· Possession limits may revert back to a daily limit once 90% of the sub-period quota for each species is projected to have been reached (no change for Winter I, less conservative for Summer/Fall)

· Rationale: Through active quota management, the Division is prepared to manage both aggregate programs with a trigger as necessary.

d. Participation in both the Winter I season and the Summer/Fall season for summer flounder: Winter I participants would be allowed to participate in the Summer/Fall season. (no change proposed from pilot program)

Rationale: Through active quota management, the Division is prepared to manage the summer flounder fishery with a larger aggregate fleet.

e. Summer Flounder Exemption Certificate:

· Summer Flounder:

o Winter I: Exemption Certificate required for participation (no change proposed)

o Summer/Fall: No Exemption Certificate required to land the weekly aggregate possession limit, but Exemption Certificate required to land > than 300 lbs/vessel/day (the pilot program did not require an Exemption to land > 300 lbs/vessel/day).

Rationale: Currently, Exemption Certificate required to land > 200 lbs/day with pilot program participants being exempt. Data shows that 81% of pilot program trips with landings by non-certificate holding operators/vessels did not land > 200 lbs/day, and 87% did not land > 300 lbs/day. The Division proposes to increase the 200 lb/day limit to 300 lbs/day (Part 14 – Summer Flounder Exemption Certificate Program) to provide for more flexibility for non-certificate holding entities.

f. General eligibility: Provisions added to Summer/Fall Season consistent with existing Winter I rules that the applicant or vessel operator must not have been assessed a criminal or administrative penalty for violations of State or Federal commercial fishing Regulations or laws within the past three (3) years.

Rationale: Currently an eligibility requirement for several programs managed by the Division.

Industry Proposals:

1. No Dual Program Participation

a. Winter I Program participants not eligible for the Summer/Fall Program; harvesters must choose between

Winter I or Summer/Fall

2. Summer Flounder Exemption Certificate

a. Summer Flounder Exemption Certificate Not Required:

1. Summer Flounder Exemption Certificate not required to land full weekly limit of summer flounder in the Summer/Fall Program (e.g., participation in summer/fall aggregate program exempts participants from summer flounder exemption certificate rules)

b. Alternate Possession Limit for participants that do not hold a Summer Flounder Exemption Certificate:

1. Weekly aggregate possession limit = 7X daily limit; however, in a single day, the vessel may only be in possession of one-half (1/2) the weekly limit or the maximum daily limit allowed, which ever amount is greater. (e.g., participation in summer/fall program exempts participants from summer flounder exemption certificate rules, but limits daily landings based on weekly aggregate limit)

3. Black Sea Bass Possession Limit

a. Increase possession limit for all seasons

1. Increase to 7X the daily limit for all black sea bass seasons

b. Increase possession limit for summer season

1. May 1 – August 15: 7X the daily limit

2. August 16 – December 31: 5X the daily limit

4. Aggregate Program Trigger:

a. Possession limits may revert back to a daily limit once 80% of the sub-period quota for each species is projected to have been reached

5. Aggregate Program participants cannot have their small-mesh net on-board when on an active aggregate program trip.

6. Summer flounder possession limit of 100 lbs/day if fishing with small-mesh and possessing < 250 lbs squid.

Additional Notes:

· Part 12 “Research Pilot Aggregate Program for Summer flounder and Black sea bass” is proposed for amendment to extend term into 2023 only in the event that this proposed rule for a full program is not adopted. If this rule is adopted, Part 12 would remain expired and would be proposed for repeal at a later date.

· Part 14 “Summer Flounder Exemption Certificate Program” is proposed for amendment to increase the increase the 200 lb/day limit to 300 lbs/day.

· Rules related to the Winter 1 Summer flounder season as currently contained in Part 3 “Finfish” are proposed to be relocated to this rule so as to house all aggregate program rules in a single location as a distinct permit program.

Additional Information and Public Comments:

All interested parties are invited to request additional information or submit written or oral comments concerning the proposed adoption until March 23, 2023 by contacting the appropriate party at the address listed below:

Peter Duhamel

Department of Environmental Management
3 Fort Wetherill Road
Jamestown, RI 02835
peter.duhamel@dem.ri.gov

Public Hearing:

A public hearing, in accordance with R.I. Gen. Laws § 42-35-2.5, to consider the proposed adoption shall be held at which time and place all persons interested therein will be heard. This hearing is subject to R.I. Gen. Laws Chapter 42-46, Open Meetings.

Public Hearing Information:

Date: March 6, 2023

Time: 5:00 P.M.

Location: URI Bay Campus, Corless Auditorium
215 South Ferry Road
Narragansett, RI, 02882

The seating capacity of the room will be enforced and, therefore, the number of persons participating in the hearing may be limited at any given time by the hearing officer in order to comply with safety and fire codes.

The place of the public hearing is accessible to individuals with disabilities. If communication assistance (readers/interpreters/captioners) is needed, or any other accommodation to ensure equal participation, please call 401-423-1927 or RI Relay 711 at least three (3) business days prior to the meeting so arrangements can be made to provide such assistance at no cost to the person requesting. For questions regarding available parking, please contact the agency staffperson listed above.

Regulatory Analysis Summary and Supporting Documentation:

In the development ofthe proposed amendment consideration was given to: (1) alternative approaches;(2) overlap or duplication with otherstatutory and regulatory provisions;and (3) significant economic impact on small business. No alternative approach,duplication, or overlap was identified based upon available information.

For full regulatory analysis or supporting documentation contact the agency staffperson listed above.