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TITLE 250 – DEPARTMENT OF ENVIRONMENTAL MANAGEMENT

CHAPTER 90 – MARINE FISHERIES

SUBCHAPTER 00 – N/A

PART 23 – Aggregate Programs for Summer Flounder and Black Sea Bass

23.1 Purpose

The purpose of the programs is to establish aggregate possession limits for commercial summer flounder and black sea bass to aid in the management of the marine resources of Rhode Island.

23.2 Authority

These Rules and Regulations are promulgated pursuant to 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.

23.3 Application

The terms and provisions of these Rules and Regulations shall be liberally construed to permit the Department to effectuate the purposes of State law, goals, and policies.

23.4 Definitions

See Rhode Island Marine Fisheries Regulations, Part 1 of this Subchapter.

23.5 Severability

If any provision of these Rules and Regulations, or the application thereof to any person or circumstances, is held invalid by a court of competent jurisdiction, the validity of the remainder of the Rules and Regulations shall not be affected thereby.

23.6 Superseded Rules and Regulations

On the effective date of these Rules and Regulations, all previous Rules and Regulations, and any policies regarding the administration and enforcement of these Regulations shall be superseded. However, any enforcement action taken by, or application submitted to, the Department prior to the effective date of these

Rules and Regulations shall be governed by the Rules and Regulations in effect at the time the enforcement action was taken, or application filed.

23.7 General Eligibility

A. Applicants must hold a valid commercial fishing license issued by the Department if fishing in state waters.

B. The vessel operator must hold a valid landing permit issued by the Department and valid federal permit if fishing in federal waters.

C. 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.

D. Applicants must be in compliance with commercial fishing data reporting requirements pursuant to Part 2 of this Subchapter.

E. The vessel must be commercially declared pursuant to Part 2 of this Chapter.

23.8 Application and Permit

A permit issued from the Director is required to participate in this program. Permit applications shall be completed on forms as prescribed by the Director. Applications not completed in their entirety shall not be considered.

23.9 General Permit Conditions

A. Participants must maintain compliance with commercial fishing data reporting requirements pursuant to Part 2 of this Subchapter.

B. Permits are non-transferable. Only the person(s) and vessel named on the permit are authorized to use the permit.

C. Participants and participating vessels must adhere to all applicable Rules and Regulations governing commercial fishing operations, including but not limited to mesh size restrictions, offloading hours, at-sea transfers, and reporting and record-keeping requirements.

D. Possession limits are subject to change throughout the season pursuant to § 1.4 of this Subchapter. Notification of any such modification is made pursuant to § 1.4(B)(4) of this Subchapter. It is the responsibility of the licensed person to comply with possession limits and all such modifications.

23.10 Winter I Program

A. Authorizes the aggregate possession limit of summer flounder during the specified season(s) to authorized permit holders.

B. Eligibility:

1. The vessel, if harvesting summer flounder from Federal waters, holds a valid Federal Summer Flounder Moratorium Permit and Rhode Island Summer Flounder Exemption Certificate issued pursuant to Part 14 of this Subchapter.

2. The vessel's operator, if harvesting summer flounder from State waters, holds a valid Summer Flounder Exemption Certificate.

C. Season: Sunday of the first full week in January through April 30.

D. Possession Limit: Four thousand (4,000) pounds per vessel per biweek.

1. 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.

23.11 Summer/Fall Program

A. Authorizes the aggregate possession limit of black sea bass and summer flounder during the specified season(s) to authorized permit holders.

B. Eligibility:

1. Applicant vessels shall agree to install a Division-approved vessel monitoring system (VMS) device on their vessel. The cost of such VMS device shall be the responsibility of the participant.

2. Applicant vessels shall agree to submit catch and effort information through a Division-approved electronic application. The cost of such application shall be the responsibility of the participant.

3. Applicant vessels may be required to take any State or Federally authorized observers at any time.

C. Period: May 1 through December 31.

D. Permit Conditions:

1. Vessel monitoring system devices and reporting applications shall be maintained in operational order and be actively engaged at all times. Malfunctioning of any device will result in permit suspension until the device is returned to operational order.

2. Participants shall document catch and effort information through the Division approved electronic application prior to offload.

3. Participating vessels may be required to take any State or Federally authorized observers at any time.

4. The permit may be terminated by the participant at any time by submitting a request to the Department. Once terminated, the participant may not reapply to the aggregate program during the same fishing year.

5. Participants are exempt from the Summer Flounder Exemption Certificate possession limit restrictions as specified in Part 14 of this subchapter.

E. Possession Limit:

1. Black sea bass:

a. May 1 through October 15: The weekly possession limit will be equal to the daily limit multiplied by seven (7).

b. October 16 through December 31: The weekly possession limit will be equal to the daily limit multiplied by six (6).

ca. Once 85% of the sub-period quota is projected to be reached, the possession limit may revert back to a daily limit.

2. Summer flounder: The weekly possession limit will be equal to the daily limit multiplied by seven (7).

a. Once 85 70% of the sub-period quota for is projected to be reached, the possession limit may revert back to a daily limit.

23.12 Penalties for Non-Compliance

A. Penalties for non-compliance:

1. In addition to the penalties for non-compliance specified in § 1.11 of this Subchapter, non-compliance with the provisions of these Regulations or the permit agreement may result in permit revocation in the aggregate program 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.

2. The Director may also revoke, in writing, the authorization to participate in this Program, should the Director determine that such program participant has been assessed a criminal or administrative penalty for violations of

State commercial fishing Regulations or for violations of Federal commercial fishing Regulations or laws, within the past three (3) years.

3. Non-compliance with the provisions of these Regulations or the permit agreement may result in the vessel being ineligible for participation in the program for up to three (3) years from the date the violation is committed, or if appealed, for up to three (3) years from the date of the disposition or final outcome of the appeal or resulting legal matter (e.g., criminal charge, civil lawsuit) before the Administrative Adjudication Division.