

**250-RICR-90-00-13**

## **TITLE 250 – DEPARTMENT OF ENVIRONMENTAL MANAGEMENT**

### **CHAPTER 90 – MARINE FISHERIES**

#### **SUBCHAPTER 00 – N/A**

#### **PART 13 – Cooperative Multi-State Possession and Landing Pilot Program for Summer Flounder**

##### **13.1 Purpose**

The purpose of these regulations is to authorize a program, entered into cooperatively by the Director and other states, which will increase the efficiency of the commercial summer flounder fishery by allowing certain eligible and qualifying commercial fishers to simultaneously carry possession limits for, and land summer flounder in cooperating states during the same fishing trip.

##### **13.2 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 Chapter 42-35, Administrative Procedures Act.

##### **13.3 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.

##### **13.4 Definitions**

See Rhode Island Marine Fisheries Regulations, Part [1](#) of this Chapter.

##### **13.5 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.

## **13.6 Superseded Rules and Regulations**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Rules and Regulations, and any policies regarding the administration and enforcement of these regulations shall be superseded.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.

## **13.7 Applicability**

- A. This program is limited to Rhode Island and cooperating states. "Cooperating states" is defined as states other than Rhode Island that enacted rules authorizing commercial fishermen licensed by that state to participate in this program, and that have reached an agreement with the Director of intent to cooperatively participate in this Program.
- B. Permit holders shall be authorized to possess a multi-state possession limit. A "multi-state possession limit" is defined as the sum of the commercial summer flounder possession limit for Rhode Island waters and the current commercial summer flounder possession limits for cooperating states within which the permit holder is authorized to participate.
- C. This program is limited to the federal Winter Period 1 (January 1 through April 30). This program is subject to annual review and re-authorization by the Director.

## **13.8 Eligibility**

- A. Applicants must hold a valid commercial fishing license or landing permit issued by the Director authorized to possess and/or land Summer flounder.
- B. Applicant vessels must be commercial declared pursuant to [Part 2 of this Subchapter](#).
- C. Applicants must be licensed or otherwise authorized to possess and/or land summer flounder in at least one cooperating state.
- D. Applicants must not have been assessed a criminal or administrative penalty for violations of state commercial fishing regulations or laws within any cooperating state, or for violations of federal commercial fishing regulations or laws, within the past three (3) years.
- E. Applicants are in compliance with commercial fishing data reporting requirements pursuant to [Part 2 of this Subchapter](#).

F. Application required. Eligible persons must apply on forms as prescribed by the Director. Applications not completed in their entirety shall not be considered.

G. Applicant vessels must be permitted by NOAA Fisheries to possess and/or land summer flounder harvested in federal waters.

### **13.9 Permit Conditions**

A. All license/permit holders 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. All license/permit holders and participating vessels will be subject to all State and Federal small mesh landing levels for summer flounder when fishing with small mesh. All license/permit holders and participating vessels will be allowed to fish south of the Southern New England declared day at sea (DDAS) counting area for summer flounder when properly enrolled in the Small Mesh Exemption Program.

B. Program participants must maintain proof of privilege to land summer flounder in cooperating states as applicable.

C. To be eligible to land in Rhode Island with a multi-state summer flounder possession limit on board, the fisherman shall have on board official documentation verifying their authorization to participate in the program of any cooperating state(s) in which the fisherman intends to land the remainder of the multi-state possession limit.

D. Permits are valid only for the calendar year issued.

E. Program participants may only retain their multi-state possession limit when fishing on a permitted vessel associated with that Program participant's authorization.

F. Summer flounder may be landed between the hours of 6:00 AM to 8:00 PM only, consistent with Part 3 of this Subchapter.

G. Summer flounder catch intended for landing in Rhode Island and any cooperating state(s) shall be stored such that the catch intended for each state is physically separated; catch intended for each state must be stored in separate totes and identified with a written sign as to the intended port of landing.

H. Program participants intending to land summer flounder in Rhode Island must call the Division of Law Enforcement (401-222-3070) at least two (2) hours prior to landing, and provide intended port and facility of landing, estimated time of landing, total weight of summer flounder to be landed in Rhode Island, and

intended ports of landing and total weight for any summer flounder to be landed in cooperating states.

### **13.10 Compliance and Enforcement**

- A. The Director may revoke, in writing, the authorization to participate in this Program, should the Director determine that such Program participant:
1. Has violated any permit condition specified in this rule.
  2. Has been assessed a criminal or administrative penalty for violations of state commercial fishing regulations or laws within any cooperating state, or for violations of federal commercial fishing regulations or laws, within the past three (3) years.
  2. Did not report landings pursuant to [Part 2 of this Subchapter](#).
  3. Exceeded the multi-state possession limit that the Program participant is authorized to possess.
  4. Violated any provision of R.I. Gen. Laws Title 20 – Fish and Wildlife, or any Marine Fisheries Regulation of Rhode Island State Agencies promulgated thereunder including but not limited to this section; or
  5. Has had program privileges revoked by a cooperating state.
- B. In the event that a Program participant's privileges are revoked, the permitted vessel associated with that program participant's authorization is no longer eligible to participate in this Program upon receipt of privilege revocation.
- C. Any Program participant whose Program privileges are revoked by the Director may submit an appeal within thirty (30) days of receipt of revocation notice to the Director asking to be heard in accordance with R.I. Gen. Laws Chapter 42-17.7 and pursuant to [Part 10-00-1 of this Title](#), Rules and Regulations for the Administrative Adjudication Division concerning reconsideration for eligibility in this Program. Such appeal shall be limited to taking factual issue regarding one or more allegations provided by the Director for revocation, as provided in sections 1.10(A)(1) to (5), inclusive, of this Part. Should the Director deem that the revocation of Program privileges was for due cause, the former Program participant may not apply for re-admittance into this Program for a period of five years from the date of revocation.

### **13.11 Term of program**

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These regulations will remain in effect for 2020 only, after which it will be subject to review and evaluation, with a view to developing recommendations for moving forward in subsequent years.