

Advance Notice of Proposed Rulemaking

Workshop - February 19, 2018

Proposed regulations for public comment

250-RICR-90-00-12

TITLE 250 – DEPARTMENT OF ENVIRONMENTAL MANAGEMENT

CHAPTER 90 – MARINE FISHERIES

SUBCHAPTER 00 – N/A

PART 12 – Regulations for an Expanded Aggregate Program for Commercial Black Sea Bass

12.1 Purpose

The purpose of these Rules and Regulations is to manage the marine resources of Rhode Island.

12.2 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 42-35-18(b)(5), Administrative Procedures Act, as amended.

12.3 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.

12.4 Definitions

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

12.5 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.

12.6 Superseded Rules and Regulations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Rules and Regulations, and any policies regarding the administration and enforcement of these regulations shall be superseded.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

12.7 Regulations

12.7.1 Research Pilot.

- A. A group of vessels will be selected to run a pilot program to gather data on aggregate limits and their effect on harvest rates and quotas. The purpose of the program will be to assess the effectiveness and viability of an aggregate landings approach as an alternative to traditional daily possession limit quota management in the commercial summer flounder and black sea bass fisheries. The Department will undertake the assessment by carefully monitoring the program throughout the course of 2018, evaluating the short-term and potential long-term impacts of the program, including the impacts to non-participating licensed fishermen and prospective future license holders, and determining the extent to which the program meets the goals, principles and standards for marine fisheries management in Rhode Island, as set forth in the RI General Laws. The Department will provide a report on the preliminary findings to the Council no later than December 1, 2018 and a final report by March 2019. The program may be extended beyond 2018 if recommended by the RI Marine Fisheries Council.
- B. Participants in the program will be authorized to commercially harvest and land summer flounder and black sea bass in Rhode Island in any amount, up to the amount of the weekly aggregate limit as specified below. Participants will also be required to meet all other terms and conditions of the program, as set forth below.

12.7.2 Participants.

- A. Anyone may be deemed eligible to participate in the pilot program, provided they meet the following requirements:
 - 1. A participant must be the owner and operator of a vessel that is licensed to harvest and land summer flounder and black sea bass in state waters, and must remain so licensed in 2018.
 - 2. A participant need not have a summer flounder exemption certificate issued to their vessel to participate, however if the participant does not have a summer flounder exemption certificate, the fisherman without the summer flounder exemption certificate on their vessel is prohibited from

possessing more than 200 pounds of summer flounder on any given day until the aggregate limit is reached.

3. Participants must be formally selected by the department to participate in the pilot program per the criteria set forth below.
4. Participants must apply to be considered for the pilot program through a formal application process as set forth by the department, no later than April 15, 2018.

12.7.3 Vessel selection criteria.

- A. Any participant may apply for participation in the pilot program, provided the following requirements are met:
 1. Each interested fisher must submit an application to the Division, on the application form as developed by the Division.
 2. Applicants that participated in the winter 1 aggregate program for summer flounder will not be considered for the pilot program.
 3. To gather data across fisheries and fishing gear types, three participating vessels from each of the following gear types will be selected for participation: gill net, otter trawl, rod and reel, fish pot, lobster pot. Gear type will be verified for each applicant by reviewing the gear reported on state catch and effort or federal vessel trip reports as submitted to the Division from the applicant.
 4. The applicant needs to have a historical record of fishing for summer flounder and black sea bass as recorded in SAFIS and either their federal vessel trip report or state catch and effort logbook dating back to at a minimum 2013.
 5. Each applicant must agree to the following data collection elements if they are selected to participate:
 - a. Each participant shall agree to install a vessel monitoring device on their vessel. The vessel monitoring device must be approved by the Division.
 - b. Each participant shall agree to submit catch and effort information through an electronic application. The electronic reporting application must be a Division approved application.
 - c. The cost of the technology needs for items 1 and 2 above will be accommodated by the participant.

- d. The participants electronic applications (vessel monitoring and reporting) must be kept in running order for the duration of the pilot program. Malfunctioning of any device will prohibit the vessel from fishing per the allowances of the pilot program until the device is fixed and in running order.
- e. Lack of adherence to any of the above will lead to removal of the participant from the pilot program for the remainder of the pilot program duration.

12.7.4 Approval of the Pilot Program Participants by the Director.

- A. Evaluation criteria: All applications submitted to the Division will be reviewed and assessed by the Director for completeness and accuracy.
- B. Final decision: Based on the Director's review of applications, the Director shall select the participants for the pilot program. The selection will be announced publicly as soon as it is made, and the announcement shall include the names of all participating vessels and/or license/permit holders.
- C. If more qualified applicants by gear type category apply than there are spots available, the applicants will be selected through a lottery process.

12.7.5 Program Implementation - Terms and Conditions.

- A. All participants must allow the Department to publicly disclose all landings of summer flounder and black sea bass made by all participating vessels, on a single-vessel resolution basis.
- B. All participating vessels must agree to take any state or federally authorized observers at any time. Each participant must fund the full costs of any and all observer coverage requested or required by the Division or the National Marine Fisheries Service.
- C. Participating vessels must remain in the program and abide by the terms and conditions of the program throughout 2018. Any vessel that drops out of, or is expelled from, the program will be prohibited from harvesting and landing summer flounder and black sea bass in an aggregate amount for the duration of 2018.
- D. All license/permit holders and vessels participating in the pilot program must adhere to all applicable rules and regulations governing commercial fishing operations, other than those set forth in section 7.7.1, 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

DDAS counting area for summer flounder when properly enrolled in the Small Mesh Exemption Program.

- E. The authorization to participate in the pilot program is non-transferable. Only vessels authorized by the Director may participate in the pilot program during 2018.

12.7.6 Aggregate Possession Limits.

- A. Participants in the pilot program will be allowed an aggregate limit for summer flounder and black sea bass which will be equal to the daily limit for each species as set forth in Part 3 of this Subchapter (250-RICR-90-00-3) multiplied by 5 days.
- B. Participants will be allowed to aggregate their harvest over a week period but may not exceed the weekly limit as specified in sub section a above.
- C. Exceeding the weekly limit will lead to immediate removal from the pilot program.
- D. The weekly periods for the duration of the program will be issued explicitly by the Division to each participant. Alternate weekly periods will not be allowed.

12.7.7 Enforcement.

- A. If a participant exceeds their weekly aggregate limit for either species, or if the participating vessel is found to be in violation of any of the terms and conditions set forth in these regulations, the participant will be removed from the pilot program and will be subject to potential enforcement action, including but not limited to: confiscation of catch, prohibition on the harvest and landing of summer flounder and black sea bass for the remainder of the year, license and/or permit suspension or revocation, fines, and disqualification from participation in any future alternative management programs. All penalty provisions applicable to violations of marine fisheries laws and regulations will also be applicable to participants in the pilot program.