

7.7.6 Moratorium on the Landing of Summer Flounder -- No person shall possess, land, sell, or offer for sale in excess of two hundred (200) pounds of summer flounder *Paralichthys dentatus*, in any calendar day, in the State of Rhode Island or the jurisdictional waters of the state without a summer flounder exemption certificate issued by Fish and Wildlife and a valid Rhode Island commercial fishing license. Application for a summer flounder exemption permit must be received by Fish and Wildlife prior to January 1, 1997. Provided, however, that the two hundred (200) pound daily limit shall be waived, during the 2010 calendar year, for any vessel whose owner does not have a summer flounder exemption certificate but has been authorized for participation by the Director in an approved summer flounder sector allocation pilot program, conducted pursuant to section 7.7.11.

7.7.11 Research Set Aside

A portion of the State's summer flounder quota for ~~2009~~ **2010** will be allocated to a continuation of the ~~one-year~~ sector allocation pilot program that began in 2009. The 2010 program, a modified version of the 2009 program, is broadened to allow participation by all vessels, including those that do not have federal permits or RI summer flounder exemption certificates, and re-structured via use of an allocation formula that is based on historical landings during the May-December time period. The purpose of the program ~~will be~~ **is** to continue to assess the effectiveness and viability of a ~~rights-based~~ **catch-share** approach as an alternative to traditional quota management in the commercial summer flounder fishery. The Department will continue to undertake the assessment by carefully monitoring the program throughout the course of ~~2009~~ **2010**, 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 weekly public updates of all landings made pursuant to the program; provide ~~monthly~~ updates on the program to the RI Marine Fisheries Council at all Council meetings throughout 2010; report preliminary assessment findings to the Council at the first regularly scheduled Council meeting after no later than October 1, 2009 ~~2010~~; and issue a final report to the Council at the first regularly scheduled Council meeting after no later than November 1, 2009 ~~February 1, 2011~~ or earlier if possible.

Participants in the program will be authorized to commercially harvest and land summer flounder in Rhode Island in any amount, up to the

amount of the research set aside and the sector allocation(s) established pursuant thereto, at any time of the year, until the research set aside and the sector allocation(s) established pursuant thereto are fully harvested; provided, however, that a total allowable catch limit will be established for ~~some or all of a portion of~~ the summer sub-period, i.e., from (May 1 through ~~October 31~~ September 15) (see subsection 7.7.11-5(~~gh~~)). Participants will not be bound by daily or weekly possession limits, nor will participants be bound by sub-period closures. Participants will be prohibited from discarding any summer flounder, or parts thereof, that are fourteen (14) inches or greater in total length, unless damaged and unsellable, while engaged in the program. Participants will also be required to meet all other terms and conditions of the program, as set forth below.

The research set aside will involve an aggregate allocation for each approved sector. Each allocation will involve a “hard” total allowable catch (TAC), i.e., a specific and definitive amount of summer flounder, constituting the maximum aggregate amount of summer flounder that may be harvested by the participants in each sector. Any discards of sub-legal-sized fish, or damaged and unsellable legal-sized fish, will be deducted from the TAC.

The program may involve one or more qualified sectors, and each sector may involve any number of qualified participants; provided that the number of participants in each sector shall be greater than three (3). If no sector becomes qualified for participation in the pilot program, there will no research set aside for ~~2009~~ 2010.

All applications for recognition of a sector must be submitted no later than June 28, 2010.

7.7.11-1 Participants

Anyone may be deemed eligible to participate in the pilot program, provided they meet the following requirements:

a. ~~A~~ The principal participant must be the owner ~~and operator~~ of a qualified vessel, ~~that is licensed to harvest summer flounder in federal waters, and must remain so licensed in 2009. In addition, a participant must hold a RI license or landing permit allowing for the landing of summer flounder in RI, and must remain so licensed or permitted in 2009. In addition, a participant must be the owner and operator of a vessel that holds a RI summer flounder exemption certificate, and must remain so permitted in 2009.~~

To be qualified, a vessel must be either:

(1) licensed to commercially harvest summer flounder in federal

waters and be operated by the holder of a RI license or landing permit allowing for the commercial harvest and/or landing of summer flounder in RI; or
(2) operated by the holder of a RI license allowing for the commercial harvest and landing of summer flounder in RI.
In addition, a qualified vessel must have verifiable history of commercial landings of summer flounder in Rhode Island during some or all of the five-year period 2004-2008,

b. Secondary participants shall include any licensed vessel operators working on behalf of principal participants.

bc. A participant must not have been assessed a criminal or administrative penalty in the past three years for a violation of any state or federal law or regulation relating to marine fisheries.

ed. Participants must be formally organized as a sector, and each sector must meet all of the requirements set forth below.

e. Participation in any sector shall not be approved for any more than one vessel that is owned by the same owner.

7.7.11-2 Sectors

Any group of **qualified three or more eligible** participants may form a sector and apply for participation in the pilot program, provided the following requirements are met:

a. Each prospective sector must submit a Proposal to the Division, describing the group's intent relative to participation in the pilot program.

b. Each prospective sector must submit a fully executed Sector Contract to the Division. The Sector Contract must be signed by all participants, and must bind them to the terms and conditions of the Operations Plan. The Contract must hold the Sector and all participants in the sector jointly and severally liable for any violations of applicable State or Federal fishery laws and regulations for which any participant of that Sector has been found culpable by a duly authorized governmental entity.

c. Each prospective sector must submit an Operations Plan to the Division. The Operations Plan must contain at least the following elements:

1. A roster of all **parties, qualified** vessels, **license/permit**

~~holders, and vessel owners, federal permit numbers (if applicable), licensed vessel operators, and any other parties~~ who will participate in the sector. The roster shall include all ~~relevant information relating to the license and/or permit history of the participants, as well as~~ verifiable data on the commercial landings of summer flounder in RI for each vessel, ~~dating back for a~~ during the five-year period 2004-2008, as well as any relevant information pertaining to the license and/or permit histories of the participants of five (5) calendar years.

2. An acceptable plan detailing the rules the sector participants will agree to abide by in order to avoid exceeding the sector allocation (TAC), including detailed plans for enforcement of the Sector rules, as well as detailed plans for the monitoring and reporting of landings and discards. If applicable, the plan must describe whether the sector allocation will be sub-allocated to individual participants and, if so, in what amounts or percentages.

3. The name of, and contact information for, the Sector Manager, who will act as a designated agent for service of process and serve as overseer of the day-to-day operations of the sector.

7.7.11-3 Approval of Pilot Program Sectors by the Director

a. Evaluation criteria -- All proposals submitted to the Division will be reviewed and assessed by the Director in accordance with the following evaluation criteria:

1. Completeness – Does the proposal include a full description of the group’s intent relative to participation in the pilot program? Does the proposal include a fully executed Sector Contract that comports with sub-section 7.7.11-2(b)? Does the proposal include an Operations Plan that meets all of the requirements set forth in sub-section 7.7.11-2(c)?

2. Accuracy – Are the ~~license/permit histories and the~~ landings data, and any relevant information pertaining to license/permit histories, provided in the proposal verifiable, consistent with data sources accessible by the Department and accurate?

3. Enforcement history – Have there been any criminal or administrative penalties assessed within the past three years on any participant associated with the proposal?

4. Landings History – For how long, and in what amounts, have

the proposed participants commercially landed summer flounder in Rhode Island?

5. Clarity and strength – Is the Operations Plan well developed and likely to provide for strong and effective management and control of the sector and its operations?

6. Fishery management goals – Is the proposal likely to contribute substantively and meaningfully to reductions in bycatch mortality, improved economic efficiency, sustainability, and safety at sea? Is the proposal likely to furnish quality data, information, and insight that will enable the Department to (i) assess the effectiveness and viability of a **rights-based catch-share** approach as an alternative to traditional quota management in the commercial summer flounder fishery, and (ii) determine the extent to which a sector-allocation program meets the goals, principles and standards for marine fisheries management in Rhode Island, as set forth in the RI General Laws?

7. Broad-based applicability and benefit – Is the proposal likely to furnish data, information, and insight that can be applied beneficially to other Rhode Island-based fishers, fisheries, and gear types in future years?

b. Final decision – Based on the Director’s review of proposals undertaken pursuant to subsection (a) above, the Director shall select one or more sectors for participation in 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, **vessel owners**, and/or license/permit holders, and the allocation (TAC) assigned to the sector(s). If the Director finds that no sector is qualified for participation in the pilot program, there will **be** no pilot program for ~~2009~~ **2010**.

7.7.11-4 Determination of Sector Allocations and Research Set Aside

The Director will calculate the amount of the individual sector allocations as follows:

For each approved sector, the Director will sum the total commercial landings of summer flounder in Rhode Island for each and all participating vessels during each and all of the five years, 2004-2008 **for the period May 1 through December 31**, and label it

“total sector catch.” The Director will then determine the total commercial landings of summer flounder in Rhode Island by all commercial fishermen over the same 2004-2008 period, from May 1 through December 31, and label it “total state catch.” The Director will then divide the total sector catch by the total state catch to derive a final fractional share, reflecting the portion of the state summer flounder catch harvested by the participating vessels over the five-year period, 2004-2008 from May 1 through December 31.

Final adjusted sector allocations for pilot program: For each approved sector, the final adjusted allocation for the pilot program will be determined by applying the final fractional share for the sector to the portion of the State’s overall summer flounder quota for ~~2009~~ 2010 that the State has allocated to the summer and winter II sub-periods, and then subtracting from that amount the total amount of summer flounder landed commercially by the sector participants from ~~January 1~~ May 1, 2009 ~~2010~~ until the date of the Director’s final decision per sub-section 7.7.11-3(b).

The Director will calculate the amount of the research set aside as follows:

If more than one sector is approved for the pilot program, the final adjusted sector allocations for each approved sector will be added. The sum total will constitute the amount of the research set aside for ~~2009~~ 2010. If only one sector is approved for the pilot program, the final adjusted sector allocation for that sector will constitute the amount of the research set aside for ~~2009~~ 2010.

7.7.11-5 Program Implementation – Terms and Conditions

a. All sectors must utilize detailed tracking sheets, with single-vessel resolution, in a format pre-approved by the Division, to account for all landings and discards by all sector participants throughout the course of the program. Each sector manager shall be responsible for maintaining these records and providing them to the Division in a form and manner prescribed by the Division on a weekly basis throughout the year; on or before each Thursday, the complete weekly record of each participating vessel shall be filed with the Division for the preceding Sunday through Saturday period. Each sector manager shall notify the Division no later than forty-eight (48) hours after seventy-five percent (75%) of the sector allocation has been harvested, and then again no later than forty-eight (48) hours after ninety percent (90%) of the sector allocation has been harvested. All trip monitoring and reporting costs shall be

borne by each sector, through the sector manager.

b. All sectors must allow the Department to publicly disclose all landings **and discards** of summer flounder made by all participating vessels, on a single-vessel resolution basis.

c. All participating vessels must agree to take any state or federally authorized observers at any time. Each sector, through the sector manager(s), must fund the full costs of any and all observer coverage requested or required by the Division or the National Marine Fisheries Service.

d. All participating vessels must notify the DEM's Division of Law Enforcement (401-222-2284 or 222-3070) at least one hour prior, but not more than six hours prior, to all commercial landings in Rhode Island, regardless of whether or not such landings include summer flounder.

e. All legal-sized **fluke summer flounder** harvested during any and all sector-related fishing operations must be retained, landed, and counted against the sector allocation. All summer flounder discarded due to damage rendering the fish unsellable or sub-legal size must also be counted against each sector allocation.

f. On the first of every month through October 1, the Division shall tally the total poundage of summer flounder discards reported by the sector participants and apply the net poundage from the preceding month to the remaining summer I sub-period quota for the general category commercial summer flounder fishery. If the sub-period has closed at the time of the tally, the net poundage shall be applied to the winter II sub-period quota. On November 1 and December 1, the Division shall tally the total poundage of summer flounder discards reported by the sector participants and apply the net poundage from each preceding month to the remaining winter II sub-period quota for the general category commercial summer flounder fishery.

fg. No vessel participating in the program shall fish commercially with gear that is designed to catch summer flounder, between June 1, **2009** and September 30, **2009** within one mile seaward of the southern Rhode Island coastline. This baseline is further defined as the shoreline running from Watch Hill to Point Judith, the mouth of Narragansett Bay running from Point Judith to Brenton Point, the south shore of Aquidneck Island, the mouth of the Sakonnet River running from Sachuest Point to Sakonnet Point, and the south shore of Little Compton to the Massachusetts state line.

gh. A total allowable catch (TAC) limit will be established for the summer sub-period, beginning May 1 and continuing through September 15; ~~provided, however, that if the summer sub-period quota, established for the general fishery pursuant to sub-section 7.7.1-2, is not fully harvested by September 15, the sector will continue to operate under the summer sub-period TAC until October 31, or until the summer sub-period quota, established pursuant to sub-section 7.7.1-2, is fully harvested, whichever comes first.~~ The summer sub-period TAC shall be calculated as follows:

For each vessel participating in each sector, a summer sub-period allocation of ~~7,500~~ 10,800 pounds is established. For each sector, the summer sub-period TAC shall be ~~7,500~~ 10,800 pounds multiplied by the number of vessels participating in the sector.

hi. Once a sector's allocation is met, sector operations will be terminated for the remainder of the year, and no vessel participating in the program, nor any licensed individual associated with such vessel, shall fish commercially with gear that is designed to catch summer flounder for the remainder of the year.

ij. Once a sector's summer sub-period TAC is met, sector operations will be terminated for the remainder of the open portion of the summer sub-period, per subsection (**gh**) above, and no vessel participating in the program, nor any licensed individual associated with such vessel, shall fish commercially with gear that is designed to catch summer flounder for the remainder of the open portion of the summer sub-period, per subsection (**gh**) above.

jk. Participating vessels must remain in the sector and abide by the terms and conditions of the sector throughout ~~2009~~ 2010. Any vessel that drops out of, or is expelled from, a sector will be prohibited from harvesting and landing summer flounder for the duration of ~~2009~~ 2010. The sector manager shall notify the Division no later than forty-eight (48) hours after any vessel drops out of, or is expelled from, a sector.

kl. All license/permit holders and vessels participating in the sector allocation 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.

lm. The authorization to participate in the pilot program is non-transferable. Only vessels authorized by the Director may participate in the pilot program during ~~2009~~ 2010.

mn. It shall be the responsibility of each sector manager to oversee the day-to-day operations of the sector, ensure compliance with all of the terms and conditions governing the sector, as set forth in these rules and regulations, and as detailed in the Sector Contract and Sector Operations Plan, and to serve as the primary point of contact with the Division.

7.7.11-6 Enforcement

If a sector exceeds its allocation, or if one or more participating vessels is found to be in violation of any of the terms and conditions set forth in these regulations, the sector will be declared null and void due to breach of contract and all participating vessels and license/permit holders will be subject to potential enforcement action, including but not limited to: confiscation of catch, prohibition on the harvest and landing of summer flounder 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 sector allocation pilot program.

7.7.11-7 Control Date

A control date of December 31, 2009 is established for the commercial summer flounder fishery in Rhode Island.