

“PERTAINING TO SUMMER FLOUNDER”

CHAPTER 4 VAC 20-620-10 ET SEQ.

DRAFT

PREAMBLE

This chapter establishes limitations on the commercial and recreational harvest of summer flounder in order to manage the fishing mortality rate in order to maintain a healthy stock of summer flounder. The limitations include a commercial harvest quota and possession limits, minimum size limits, and a recreational possession and season limit.

This chapter is promulgated pursuant to the authority contained in §§28.2-201 and 28.2-204 of the Code of Virginia and amends and re-adopts, as amended, previous Chapter 4 VAC20-620-10 et seq. which was promulgated ~~February 25, 2020~~ August 25, 2020 and made effective on ~~February 27, 2020~~ September 1, 2020. The effective date of this chapter, as amended, is ~~September 1, 2020~~ February 1, 2021.

4 VAC 20-620-10. Purpose.

The purpose of this chapter is to manage commercial and recreational fishing mortality in order to maintain healthy stocks of summer flounder and to establish a license for commercial fishing vessels to land summer flounder in Virginia.

4 VAC 20-620-20. Definitions.

The following words and terms when used in this chapter shall have the following meanings unless the context indicates otherwise:

"Chesapeake Bay and its tributaries" means all tidal waters of Virginia, excluding the Potomac River tributaries and the coastal area as defined in this section.

"Coastal area" means the area that includes Virginia's portion of the Territorial Sea and all of the creeks, bays, inlets, and tributaries on the seaside of Accomack County, Northampton County, including areas east of the causeway from Fisherman Island to the mainland and the City of Virginia Beach, including federal areas and state parks fronting on the Atlantic Ocean and east and south of the point where the shoreward boundary of the Territorial Sea joins the mainland at Cape Henry.

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“Land” or “landing” means to (i) enter port with finfish, shellfish, crustaceans, or other marine seafood on board any boat or vessel; (ii) begin offloading finfish, shellfish, crustaceans, or other marine seafood; or (iii) offload finfish, shellfish, crustaceans, or other marine seafood.

"Potomac River tributaries" means all the tributaries of the Potomac River that are within Virginia's jurisdiction beginning with, and including, Flag Pond, thence upstream to the District of Columbia boundary.

"Safe harbor" means that a vessel has been authorized by the commissioner to enter Virginia waters from federal waters solely to either dock temporarily at a Virginia seafood buyer's place of business or traverse the Intracoastal Waterway from Virginia to North Carolina.

“Snout” means the most forward projection from a fish’s head that includes the upper and lower jaw.

“Total length” means the length of a fish measured from the most forward projection of the snout, with the mouth closed, to the tip of the longer lobe of the tail (caudal) fin, measured with the tail compressed along the midline, using a straight-line measure, not measured over the curve of the body.

4 VAC 20-620-30. Commercial harvest quota and allowable landings.

A. During each calendar year, allowable commercial landings of summer flounder shall be limited to a quota in total pounds calculated pursuant to the joint Mid-Atlantic Fishery Management Council/Atlantic States Marine Fisheries Commission Summer Flounder Fishery Management Plan, as approved by the National Marine Fisheries Service on August 6, 1992 (50 CFR Part 625); and shall be distributed as described in subsections B through G of this section.

B. The commercial harvest of summer flounder from Virginia tidal waters for each calendar year shall be limited to 100,000 pounds of the annual quota described in subsection A of this section.

C. From the first Monday in January through October 15 the allowable landings of summer flounder harvested outside of Virginia shall be limited to an amount of pounds equal to 60% of the quota described in subsection A of this section after deducting the amount specified in subsection B of this section.

D. From October 16 through December 31, allowable landings of summer flounder harvested outside of Virginia shall be limited to an amount of pounds equal to 40% of the quota, as described in subsection A of this section, after deducting the amount specified in subsection B of this section, and as may be further modified by subsection E of this section.

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E. Should landings from the first Monday in January through October 15 exceed or fall short of 60% of the quota described in subsection A of this section, any such excess shall be deducted from allowable landings described in subsection D of this section, and any such shortage shall be added to the allowable landings as described in subsection D of this section. Should the commercial harvest specified in subsection B of this section be projected as less than 100,000 pounds, any such shortage shall be added to the allowable landings described in subsection D of this section.

F. The Marine Resources Commission will give timely notice to the industry of the calculated poundages and any adjustments to any allowable landings described in subsections C and D of this section. It shall be unlawful for any person to harvest or to land summer flounder for commercial purposes after the commercial harvest or any allowable landings as described in this section have been attained and announced as such. If any person lands summer flounder after the commercial harvest or any allowable landings have been attained and announced as such, the entire amount of summer flounder in that person's possession shall be confiscated.

G. It shall be unlawful for any buyer of seafood to receive any summer flounder after any commercial harvest or landing quota as described in this section has been attained and announced as such.

4 VAC 20-620-40. Commercial vessel possession and landing limitations.

A. It shall be unlawful for any person harvesting summer flounder outside of Virginia's waters to do any of the following, except as described in subsections B, C, D, E and F of this section:

1. Possess aboard any vessel in Virginia waters any amount of summer flounder in excess of 10% by weight of Atlantic croaker or the combined landings, on board a vessel, of black sea bass, scup, squid, scallops and Atlantic mackerel.
2. Possess aboard any vessel in Virginia waters any amount of summer flounder in excess of 1,500 pounds landed in combination with Atlantic croaker.
3. Fail to sell the vessel's entire harvest of all species at the point of landing.

B. Nothing in this chapter shall preclude a vessel from possessing any North Carolina or New Jersey vessel possession limit of summer flounder in Virginia; however, no vessel that possesses the North Carolina or New Jersey vessel possession limit of summer flounder shall offload any amount of that possession limit, except as described in subsection K of this section.

C. From February ~~24~~ 25 through ~~March 31~~ April 7, it shall be unlawful for any person harvesting summer flounder outside of Virginia waters to do any of the following:

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1. Possess aboard any vessel in Virginia waters any amount of summer flounder in excess of the combined total of the Virginia landing limit described in subdivision 2 of this subsection and the amount of the legal North Carolina or New Jersey landing limit or trip limit.

2. Land in Virginia more than a total of ~~42,500~~ 15,000 pounds of summer flounder.

3. Land in Virginia any amount of summer flounder more than once in any consecutive five-day period.

D. From September 8 through October 31, it shall be unlawful for any person harvesting summer flounder outside of Virginia waters to do any of the following:

1. Possess aboard any vessel in Virginia waters any amount of summer flounder in excess of the total of the Virginia landing limit described in subdivision 2 of this subsection and the amount of the legal North Carolina or New Jersey landing limit or trip limit.

2. Land in Virginia more than a total of 12,000 pounds of summer flounder.

3. Land in Virginia any amount of summer flounder more than once in any consecutive five-day period.

E. From November 1 through December 31, it shall be unlawful for any person harvesting summer flounder outside of Virginia waters to do any of the following:

1. Possess aboard any vessel in Virginia waters any amount of summer flounder in excess of the total of the Virginia landing limit described in subdivision 2 of this subsection and the amount of the legal North Carolina or New Jersey landing limit or trip limit.

2. Land in Virginia more than a total of 12,000 pounds of summer flounder.

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3. Land in Virginia any amount of summer flounder more than once in any consecutive five-day period.

F. From January 1 through December 31, any boat or vessel issued a valid federal Summer Flounder moratorium permit and owned and operated by a legal Virginia Commercial Hook-and-Line Licensee that possesses a Restricted Summer Flounder Endorsement shall be restricted to a possession and landing limit of 200 pounds of summer flounder, except as described in 4 VAC 20-620-30 F.

G. Upon request by a marine police officer, the seafood buyer or processor shall offload and accurately determine the total weight of all summer flounder aboard any vessel landing summer flounder in Virginia.

H. Any possession limit described in this section shall be determined by the weight in pounds of summer flounder as customarily packed, boxed and weighed by the seafood buyer or processor. The weight of any summer flounder in pounds found in excess of any possession limit described in this section shall be prima facie evidence of violation of this chapter. Persons in possession of summer flounder aboard any vessel in excess of the possession limit shall be in violation of this chapter unless that vessel has requested and been granted safe harbor. Any buyer or processor offloading or accepting any quantity of summer flounder from any vessel in excess of the possession limit shall be in violation of this chapter, except as described by subsection J of this section. A buyer or processor may accept or buy summer flounder from a vessel that has secured safe harbor, provided that vessel has satisfied the requirements described in subsection J of this section.

I. If a person violates the possession limits described in this section, the entire amount of summer flounder in that person's possession shall be confiscated. Any confiscated summer flounder shall be considered as a removal from the appropriate commercial harvest or landings quota. Upon confiscation, the marine police officer shall inventory the confiscated summer flounder and, at a minimum, secure two bids for purchase of the confiscated summer flounder from approved and licensed seafood buyers. The confiscated fish will be sold to the highest bidder and all funds derived from such sale shall be deposited for the Commonwealth pending court resolution of the charge of violating the possession limits established by this chapter. All of the collected funds will be returned to the accused upon a finding of innocence or forfeited to the Commonwealth upon a finding of guilty.

J. It shall be unlawful for a licensed seafood buyer or federally permitted seafood buyer to fail to contact the Marine Resources Commission Operation Station prior to a vessel offloading summer flounder harvested outside of Virginia. The buyer shall provide to the Marine Resources Commission the name of the vessel, its captain, an estimate of the amount in pounds of summer flounder on board that vessel, and the anticipated or approximate offloading time. Once offloading of any vessel is complete and the weight of the landed summer flounder has been

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determined, the buyer shall contact the Marine Resources Commission Operations Station and report the vessel name and corresponding weight of summer flounder landed. It shall be unlawful for any person to offload from a boat or vessel for commercial purposes any summer flounder during the period of 9 p.m. to 7 a.m.

K. Any boat or vessel that has entered Virginia waters for safe harbor shall only offload summer flounder when the state that licenses that vessel requests to transfer quota to Virginia, in the amount that corresponds to that vessel's possession limit, and the commissioner agrees to accept that transfer of quota.

L. After any commercial harvest or landing quota as described in 4VAC20-620-30 has been attained and announced as such, any boat or vessel possessing summer flounder on board may enter Virginia waters for safe harbor but shall contact the Marine Resources Commission Operation Center in advance of such entry into Virginia waters.

M. It shall be unlawful for any person harvesting summer flounder outside of Virginia waters to possess aboard any vessel, in Virginia, any amount of summer flounder, once it has been projected and announced that 100% of the quota described in 4VAC20-620-30A has been taken.

4 VAC 20-620-41. Summer flounder endorsement license, restricted summer flounder endorsement license, and exemption.

A. It shall be unlawful for any boat or vessel to land summer flounder in Virginia, for commercial purposes, without first obtaining a Seafood Landing License as described in 4VAC20-920-30 and a Summer Flounder Endorsement License or possessing a Restricted Summer Flounder Endorsement License. The Summer Flounder Endorsement License shall be required of each boat or vessel used to land summer flounder for commercial purposes. Possession of any quantity of summer flounder which exceeds the possession limit, described in 4VAC20-620-60, shall be presumed to be for commercial purposes. Any boat or vessel so licensed shall display a Summer Flounder Endorsement License decal, provided by the Virginia Marine Resources Commission. The decals shall be displayed on both the port and starboard sides of the pilot house.

B. It shall be unlawful for any buyer of seafood to receive any summer flounder from any boat or vessel which is not licensed for the landing of summer flounder unless that boat or vessel is exempt from the requirement to obtain a Seafood Landing License and a Summer Flounder Endorsement License as described in 4VAC20-920-30 and this section.

C. Any boat or vessel that is both owned and operated by a person who holds a valid Virginia Commercial Fisherman Registration License and is used solely for fishing for summer flounder

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only in Virginia waters shall be exempt from the requirement to obtain a Summer Flounder Endorsement License.

D. Any boat or vessel operated by a person harvesting and landing marine seafood from the Potomac River who holds a valid Potomac River Fisheries Commission commercial license shall be exempt from the requirement to obtain a Summer Flounder Endorsement License.

E. Any boat or vessel operated by a person harvesting and landing marine seafood from leased ground or reharvesting marine seafood as part of the relay process shall be exempt from the requirements to obtain a Summer Flounder Endorsement License.

F. To be eligible for a Summer Flounder Endorsement License the boat or vessel shall have landed and sold at least 500 pounds of summer flounder in Virginia in at least one year during the period of 1993 through 1995.

1. The owner shall complete an application for each boat or vessel by providing to the commission a notarized and signed statement of applicant's name, address, telephone number, boat or vessel name, and registration or documentation number and a copy of the vessel's federal Summer Flounder moratorium permit.

2. The owner shall complete a notarized authorization to allow the commission to obtain copies of landings data from the National Marine Fisheries Service.

G. To be eligible for a Restricted Summer Flounder Endorsement License (RSFEL), a person must be a legal Virginia commercial hook-and-line licensee and own a vessel issued a valid federal summer flounder moratorium permit. The person shall complete an application for the RSFEL by providing to the commission a notarized and signed statement of the person's name, address, telephone number, boat or vessel name, the boat or vessel's registration or documentation number, and a copy of that vessel's federal summer flounder moratorium permit.

H. Effective February 24, 2004, any vessel eligible for a Summer Flounder Endorsement License shall be considered a baseline vessel, and that vessel's total length shall be used to determine eligibility for all future transfers of that Summer Flounder Endorsement License. A Summer Flounder Endorsement License may be transferred from one vessel to another vessel that is entering the summer flounder fishery, provided the vessel receiving the Summer Flounder Endorsement License does not exceed by more than 10%, the total length of the baseline vessel that held that Summer Flounder Endorsement License on February 24, 2004.

4 VAC 20-620-42. Summer flounder endorsement license and hardship exception.

Any licensed fisherman who provides to the commissioner an opinion and supporting documentation from an attending physician of an existing medical condition, proof of active

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military service, documentation that indicates substantial vessel damage, or other significant extenuating circumstances that prevented that licensed fisherman from satisfying the eligibility criteria described in 4VAC20-620-41 F and can provide documentation of having landed at least 500 pounds of summer flounder during any one year of the 1990 through 1992 period may be authorized for an exception to the requirements to be eligible for a Summer Flounder Endorsement License as described in 4VAC20-620-41 F.

4 VAC 20-620-45. Repealed.**4 VAC 20-620-50. Minimum size limits.**

A. The minimum size for summer flounder harvested by commercial fishing gear shall be 14 inches in total length.

B. The minimum size of summer flounder harvested by recreational fishing gear, including hook and line, rod and reel, spear and gig, shall be 16.5 inches in total length, except that the minimum size of summer flounder harvested in the Potomac River tributaries shall be the same as established by the Potomac River Fisheries Commission for the mainstem Potomac River.

C. It shall be unlawful for any person to possess any summer flounder smaller than the designated minimum size limit.

D. Nothing in this chapter shall prohibit the landing of summer flounder in Virginia that were legally harvested in the Potomac River.

4 VAC 20-620-60. Recreational possession limit.

A. It shall be unlawful for any person fishing in any tidal waters of Virginia, except the Potomac River tributaries, with recreational hook and line, rod and reel, spear, gig or other recreational gear to possess more than four summer flounder. When fishing is from a boat or vessel where the entire catch is held in a common hold or container, the possession limit shall be for the boat or vessel and shall be equal to the number of persons on board legally eligible to fish multiplied by four. The captain or operator of the boat or vessel shall be responsible for any boat or vessel possession limit. Any summer flounder taken after the possession limit has been reached shall be returned to the water immediately.

B. It shall be unlawful for any person fishing in the Potomac River tributaries with recreational hook and line, rod and reel, spear, gig or other recreational gear to possess more summer flounder than the possession limit established by the Potomac River Fisheries Commission for the mainstem Potomac River. When fishing is from a boat or vessel where the entire catch is held in a common hold or container, the possession limit shall be for the boat or vessel and shall be equal to the number of persons on board legally eligible to fish multiplied by the possession limit established

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by the Potomac River Fisheries Commission for the mainstem Potomac River. The captain or operator of the boat or vessel shall be responsible for any boat or vessel possession limit. Any summer flounder taken after the possession limit has been reached shall be returned to the water immediately.

C. Possession of any quantity of summer flounder that exceeds the possession limit described in subsections A and B of this section shall be presumed to be for commercial purposes.

4 VAC 20-620-70. Recreational fishing season.

A. The recreational fishing season for any tidal waters of Virginia, except the Potomac River tributaries, shall be open year-round.

B. The recreational fishing season for the Potomac River tributaries shall be the same as established by the Potomac River Fisheries Commission for the mainstem Potomac River.

C. It shall be unlawful for any person fishing recreationally to take, catch, or possess any summer flounder during any closed recreational fishing season.

D. Nothing in this chapter shall prohibit the landing of summer flounder in Virginia that were legally harvested in the Potomac River.

4 VAC 20-620-75. (Repealed.)

4 VAC 20-620-80. Penalty

A. As set forth in §28.2-903 of the Code of Virginia, any person violating any provision of this chapter shall be guilty of a Class 3 misdemeanor, and a second or subsequent violation of any provision of this chapter committed by the same person within 12 months of a prior violation is a Class 1 misdemeanor.

B. Any person found guilty of violating any of the seafood laws or regulations of Virginia may have their Summer Flounder Endorsement License revoked upon review by the commission as provided for in §28.2-232 of the Code of Virginia.

This is to certify that the foregoing is a true and accurate copy of the chapter passed by the Marine Resources Commission, pursuant to authority vested in the Commission by §§28.2-201, and 28.2-204 of the Code of Virginia, and recorded in the Commission's minute book, at meeting held in Hampton, Virginia on January 26, 2021.

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MARINE RESOURCES COMMISSION

By: _____

**Steven G. Bowman
Commissioner**

Subscribed and sworn to before me this _____ day of January 2021.

Notary Public

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