PREAMBLE

This chapter establishes limitations on the commercial and recreational harvest of Summer Flounder in order to reduce the fishing mortality rate and to rebuild the severely depleted 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 4VAC20-620-10 et seq. which was promulgated April 28, 2015 and made effective on May 1, 2015. The effective date of this chapter, as amended, is November 1, 2015.

4 VAC 20-620-10. Purpose.

The purpose of this chapter is to reduce commercial and recreational fishing mortality in order to rebuild the severely depleted stocks of Summer Flounder.

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.

"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.

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 300,000 pounds of the annual quota described in subsection A of this section. Of this amount, 142,114 pounds shall be set aside for Chesapeake Bay-wide harvest.

C. From the first Monday in January through October 31 the allowable landings of Summer Flounder harvested outside of Virginia shall be limited to an amount of pounds equal to 70.7% of the quota described in subsection A of this section after deducting the amount specified in subsection B of this section.

D. From November 1 through December 31, allowable landings of Summer Flounder harvested outside of Virginia shall be limited to an amount of pounds equal to 29.3% 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.

E. Should landings from the first Monday in January through October 31 exceed or fall short of 70.7% 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 300,000 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, and D 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. From the second Wednesday in March through April 19, 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 combined total of the Virginia landing limit described in subdivision 3 of this subsection and the amount of the legal North Carolina landing limit or trip limit.

2. Land Summer Flounder in Virginia for commercial purposes more than twice during each consecutive 20-day period, with the first 20-day period beginning on the second Wednesday in March.

3. Land in Virginia more than 7,500 pounds of Summer Flounder during each consecutive 20-day period, with the first 20-day period beginning on the second Wednesday in March.

4. Land in Virginia any amount of Summer Flounder more than once in any consecutive five-day period.

C. From November 1 through December 31 of each year, or until it has been projected and announced that 85% of the allowable landings have been taken, 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 combined total of the Virginia landing limit described in subdivision 3 and 4 of this subsection and the amount of the legal North Carolina landing limit or trip limit.

2. Land Summer Flounder in Virginia for commercial purposes more than twice during each consecutive 30-day period, with the first 30-day period beginning on November 1.

3. Land in Virginia more than a total of 10,000 pounds of Summer Flounder during the first 30-day period, with the first 30-day period beginning on November 1.

4. Land in Virginia more than a total of 5,000 pounds of Summer Flounder during the second 30-day period with the second 30-day period beginning on December 1.

5. Land in Virginia any amount of Summer Flounder more than once in any consecutive five-day period.

D. From January 1 through December 31 of each year, 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.

E. 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.

F. 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 I 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 I of this section.

G. 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.

H. 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 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.

I. 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.

J. 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.

K. 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 20-620-45. 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, total length.

B. The minimum size of Summer Flounder harvested by recreational fishing gear, including but not limited to hook and line, rod and reel, spear and gig, shall be 16 inches, 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. Length shall be measured in a straight line from tip of nose to tip of tail.

D. It shall be unlawful for any person to possess any Summer Flounder smaller than the designated minimum size limit.

E. 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 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

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.

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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 Newport News, Virginia on October 27, 2015.

COMMONWEALTH OF VIRGINIA
MARINE RESOURCES COMMISSION

Jane B McCroskey for

By: John M. R. Bull

John M. R. Bull
Commissioner

Subscribed and sworn to before me this 3 day of November 2015.

Jennifer G Farmer
Notary Public

JENNIFER G. FARMER
NOTARY PUBLIC
REG. #7655529
MY COMMISSION EXPIRES 2/28/2019
COMMONWEALTH OF VIRGINIA