



**BILLING CODE 3510-22-P**

**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

**50 CFR Part 648**

**[Docket No. 170314268-7268-01]**

**RIN 0648-BG68**

**Fisheries of the Northeastern United States; Recreational Management Measures for the Summer Flounder and Scup Fisheries; Fishing Year 2017**

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Proposed rule; request for comments.

**SUMMARY:** NMFS proposes management measures for the 2017 summer flounder and scup recreational fisheries. The implementing regulations for these fisheries require NMFS to publish recreational measures for the fishing year and to provide an opportunity for public comment.

The intent of these measures is to constrain recreational catch to established limits and prevent overfishing of the summer flounder and scup resources. We are proposing the 2017 management measures and revised specifications for the recreational black sea bass fishery in separate actions.

**DATES:** Comments must be received by 5 p.m. local time, on *[insert date 15 days after date of publication in the FEDERAL REGISTER]*.

**ADDRESSES:** You may submit comments on this document, identified by NOAA-NMFS-2017-0022, by either of the following methods:

*Electronic submission:* Submit all electronic public comments via the Federal e-Rulemaking Portal.

- Go to [www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2017-0022](http://www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2017-0022),

- Click the “Comment Now!” icon, complete the required fields
- Enter or attach your comments.

**- OR -**

*Mail:* Submit written comments to John Bullard, Regional Administrator, Greater Atlantic Region, 55 Great Republic Drive, Gloucester, MA 01930.

*Instructions:* Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered by NMFS. All comments received are a part of the public record and will generally be posted for public viewing on [www.regulations.gov](http://www.regulations.gov) without change. All personal identifying information (e.g., name, address, etc.), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NMFS will accept anonymous comments (enter "N/A" in the required fields if you wish to remain anonymous).

Copies of the Supplemental Information Report (SIR) and other supporting documents for the recreational harvest measures are available from Dr. Christopher M. Moore, Executive Director, Mid-Atlantic Fishery Management Council, Suite 201, 800 N. State Street, Dover, DE 19901. The recreational harvest measures document is also accessible via the Internet at:

<http://www.greateratlantic.fisheries.noaa.gov>.

**FOR FURTHER INFORMATION CONTACT:** Peter Burns, Fishery Policy Analyst, (978) 281-9144.

**SUPPLEMENTARY INFORMATION:**

**Summary of Proposed Management Measures**

In this rule, NMFS proposes management measures for the 2017 summer flounder and scup recreational fisheries consistent with the recommendations of the Mid-Atlantic Fishery

Management Council and the Atlantic States Marine Fisheries Commission. To allow for consideration of the results of a new black sea bass benchmark stock assessment released in early 2017, the Council is addressing revised black sea bass specifications and recreational management measures separately from the summer flounder and scup recreational fisheries. Accordingly, we are proposing the revised specifications and 2017 recreational management measures for black sea bass in separate rulemakings.

NMFS is proposing measures that would apply in the Federal waters of the exclusive economic zone (EEZ). These measures apply to all federally-permitted party/charter vessels with applicable summer flounder and scup permits, regardless of where they fish, unless the state in which they land implements measures that are more restrictive. These measures are intended to achieve, but not exceed, the previously established 2017 recreational harvest limits for scup through a final rule published on December 28, 2015 (80 FR 80689), and for summer flounder in a final rule that published on December 22, 2016 (81 FR 93842).

The 2017 summer flounder recreational harvest limit is 3.77 million lb (1,710 mt), a decrease from the 2016 harvest limit of 5.42 million lb (2,458 mt). Preliminary estimates indicate that the 2016 recreational landings are 6.38 million lb (2,893 mt). These 2016 projected landings are based on preliminary Marine Recreational Information Program estimates through Wave 6 (November and December 2016). Accordingly, more restrictive management measures are necessary in 2017 to reduce landings by approximately 41 percent, compared to 2016 landings, to ensure that the landings do not exceed the recreational harvest limit.

For summer flounder, we are proposing to continue the use of conservation equivalency measures to all the states, through the Commission, to determine the most appropriate measures to constrain the landings to the 2017 recreational harvest limit. We also propose a suite of non-

preferred coastwide measures that would constrain landings to the 2017 recreational harvest limits should we not adopt the conservation equivalency approach recommended by the Council and Commission and serve as a benchmark for regional conservation equivalency proposals. Should we approve the use of conservation equivalency, we will simply waive the coastwide measures for vessels fishing in Federal waters, provided the vessel's state has implemented measures approved through the Commission process. In addition, we propose a set of precautionary default measures that a state or region must implement if they fail to provide measures that are consistent with the Commission plan.

We are not proposing any changes to the recreational measures for the 2017 recreational scup fishery, as the current suite of management measures are expected to effectively constrain landings to the 2017 recreational harvest limit.

The specific management measures for both fisheries are further described below in this preamble. All proposed minimum fish sizes are total length measurements of the fish, i.e., the straight-line distance from the tip of the snout to the end of the tail while the fish is lying on its side. All proposed possession limits are per person per trip.

### **Background and Management Process**

The summer flounder, scup, and black sea bass fisheries are managed cooperatively under the provisions of the Summer Flounder, Scup, and Black Sea Bass Fishery Management Plan (FMP) developed by the Council and the Commission, in consultation with the New England and South Atlantic Fishery Management Councils. The management units specified in the FMP include summer flounder (*Paralichthys dentatus*) in U.S. waters of the Atlantic Ocean from the southern border of North Carolina northward to the U.S./Canada border, and scup (*Stenotomus chrysops*) and black sea bass (*Centropristis striata*) in U.S. waters of the Atlantic

Ocean from 35° 13.3' N. lat. (the approximate latitude of Cape Hatteras, North Carolina). States manage these three species within 3 nautical miles (4.83 km) of their coasts, under the Commission's plan for summer flounder, scup, and black sea bass. The applicable species-specific Federal regulations govern vessels and individual fishermen fishing in Federal waters of the EEZ, as well as vessels possessing a summer flounder, scup, or black sea bass Federal charter/party vessel permit, regardless of where they fish.

#### *Recreational Management Measures Process*

The Council process for recommending recreational management measures to NMFS for rulemaking is generically described below. All meetings are open to the public and the materials utilized during such meetings, as well as any documents created to summarize the meeting results, are public information and posted on the Council's web site ([www.mafmc.org](http://www.mafmc.org)) or are available from the Council by request. Therefore, extensive background on the 2017 recreational management measures recommendation process is not repeated in this preamble.

The FMP established monitoring committees for the three fisheries, consisting of representatives from the Commission, the Council, state marine fishery agency representatives from Massachusetts to North Carolina, and NMFS. The FMP's implementing regulations require the monitoring committees to review scientific and other relevant information annually. The objective of this review is to recommend management measures to the Council that will constrain landings within the recreational harvest limits established for the three fisheries for the upcoming fishing year. The FMP limits the choices for the types of measures to minimum fish size, per angler possession limit, and fishing season.

The Council's Demersal Species Committee and the Commission's Summer Flounder, Scup, and Black Sea Bass Management Board then consider the monitoring committees'

recommendations and any public comment in making their recommendations to the Council and the Commission, respectively. The Council reviews the recommendations of the Demersal Species Committee, makes its own recommendations, and forwards them to NMFS for review. The Commission similarly adopts recommendations for the states. NMFS is required to review the Council's recommendations to ensure that they are consistent with the targets specified for each species in the FMP and all applicable laws and Executive Orders before ultimately implementing measures for Federal waters. Commission measures are final at the time they are adopted.

#### *Summer Flounder Conservation Equivalency Process*

Conservation equivalency, as established by Framework Adjustment 2 (July 29, 2001; 66 FR 36208), allows each state to establish its own recreational management measures (possession limits, minimum fish size, and fishing seasons) to achieve its state harvest limit partitioned by the Commission from the coastwide recreational harvest limit, as long as the combined effect of all of the states' management measures achieves the same level of conservation as would Federal coastwide measures. Framework Adjustment 6 (July 26, 2006; 71 FR 42315) allowed states to form regions for conservation equivalency in order to minimize differences in regulations for anglers fishing in adjacent waters.

The Council and Board annually recommend that either state- or region-specific recreational measures be developed (conservation equivalency) or that coastwide management measures be implemented to ensure that the recreational harvest limit will not be exceeded. Even when the Council and Board recommend conservation equivalency, the Council must specify a set of coastwide measures that would apply if conservation equivalency is not approved for use in Federal waters.

When conservation equivalency is recommended, and following confirmation that the proposed state or regional measures developed through the Commission's technical and policy review processes achieve conservation equivalency, NMFS may waive the permit condition found at § 648.4(b), which requires Federal permit holders to comply with the more restrictive management measures when state and Federal measures differ. In such a situation, federally permitted summer flounder charter/party permit holders and individuals fishing for summer flounder in the EEZ would then be subject to the recreational fishing measures implemented by the state in which they land summer flounder, rather than the coastwide measures.

In addition, the Council and the Board must recommend precautionary default measures when recommending conservation equivalency. The Commission would require adoption of the precautionary default measures by any state that either does not submit a summer flounder management proposal to the Commission's Summer Flounder Technical Committee, or that submits measures that would exceed the Commission-specified harvest limit for that state.

Much of the conservation equivalency measures development process happens at both the Commission and the individual state level. The selection of appropriate data and analytical techniques for technical review of potential state conservation equivalent measures and the process by which the Commission evaluates and recommends proposed conservation equivalent measures are wholly a function of the Commission and its individual member states. Individuals seeking information regarding the process to develop specific state measures or the Commission process for technical evaluation of proposed measures should contact the marine fisheries agency in the state of interest, the Commission, or both.

Once the states and regions select their final 2017 summer flounder management measures through their respective development, analytical, and review processes and submit

them to the Commission, the Commission will conduct further review and evaluation of the submitted proposals, ultimately notifying NMFS as to which proposals have been approved or disapproved. NMFS has no overarching authority in the development of state or Commission management measures, but is an equal participant along with all the member states in the review process. NMFS neither approves nor implements individual states' measures, but retains the final authority either to approve or to disapprove the use of conservation equivalency in place of the coastwide measures in Federal waters, and will publish its determination as a final rule in the **Federal Register** to establish the 2017 recreational measures for these fisheries.

### **2017 Summer Flounder Recreational Management Measures**

NMFS proposes to implement the Council's and Commission's recommendation to use conservation equivalency to manage the 2017 summer flounder recreational fishery. The Council and Commission approved this approach at their joint meeting, held in December 2016. Consequently, in February 2017, the Board adopted Addendum XXVIII to its Summer Flounder FMP to continue regional conservation equivalency for fishing year 2017. The Commission has adopted the following regions, which are consistent with the 2016 regions: (1) Massachusetts; (2) Rhode Island; (3) Connecticut and New York; (4) New Jersey; (4) Delaware, Maryland, and Virginia; and (5) North Carolina. To provide the maximum amount of flexibility and to continue to adequately address the state-by-state differences in fish availability, each state in a region is required by the Council and Commission to establish fishing seasons of the same length, with identical minimum fish sizes and possession limits. The Commission will need to certify that these measures, in combination, are the conservation equivalent of coastwide measures that would be expected to result in the recreational harvest limit being achieved, but not exceeded. More information on this addendum is available from the Commission ([www.asmfmc.org](http://www.asmfmc.org)).

NMFS proposes a suite of non-preferred coastwide measures, consistent with those adopted by the the Council and Board for implementation in 2017. Under conservation equivalency, the cumulative impact of the regional recreational measures should achieve the same constraints on harvest as the non-preferred coastwide measures. For 2017, non-preferred coastwide measures approved by the Council and Board are a 19-inch (48.3-cm) minimum fish size, a 4-fish per person possession limit, and an open season from June 1 through September 15. These measures are expected to constrain the overall recreational landings to the 2017 recreational harvest limit. If a jurisdiction's measures do not achieve the level of conservation required by the Commission, that state or region must implement the precautionary default measures. The 2017 precautionary default measures recommended by the Council and Board and proposed herein are a 20.0-inch (50.8-cm) minimum fish size, a 2-fish per person possession limit, and an open season of July 1 through August 31, 2017.

States and regions submitted their respective management measures to the Commission in March 2017. In a letter to the Greater Atlantic Regional Administrator dated April 5, 2017, the Commission informed us that it has reviewed the regional management proposals and determined that the proposals are sufficient to constrain landings to the 2017 recreational harvest limit.

### **Scup Recreational Management Measures**

The 2017 scup recreational harvest limit is 5.50 million lb (2,494 mt) and 2016 recreational landings are currently estimated at 5.40 million lb (2,449 mt). The status quo management measures are a 9-inch (22.9-cm) minimum fish size, 50-fish per person possession limit, and year-round season. The Council recommends maintaining the existing management measures, as no changes are needed to ensure the 2017 recreational harvest limit is not exceeded,

and further liberalization of the management measures is not requested or advisable. As a result, we are not proposing, for 2017, any changes to the current scup recreational management measures.

### **Classification**

Pursuant to section 304(b)(1)(A) of the Magnuson-Stevens Act, the Assistant Administrator has determined that this proposed rule is consistent with the Summer Flounder, Scup, and Black Sea Bass FMP, other provisions of the Magnuson-Stevens Act, and other applicable law, subject to further consideration after public comment.

This proposed rule has been determined to be not significant for purposes of Executive Order 12866.

An IRFA was prepared by the Council, as required by section 603 of the Regulatory Flexibility Act (RFA), to examine the impacts of these proposed specifications on small business entities, if adopted. A description of the specifications, why they are being considered, and the legal basis for proposing and implementing specifications for the summer flounder fishery are contained in the preamble to this proposed rule. A copy of the detailed RFA analysis is available from NMFS or the Council (see **ADDRESSES**). The Council's analysis made use of quantitative approaches when possible. Where quantitative data on revenues or other business-related metrics that would provide insight to potential impacts were not available to inform the analyses, qualitative analyses were conducted. A summary of the 2017 summer flounder recreational fishery management measures RFA analysis follows.

The Council conducted an evaluation of the potential socioeconomic impacts of the proposed measures in conjunction with a SIR. Because no regulatory changes are proposed that would affect the recreational scup fishery, they are not considered in the evaluation. The

proposed measures would continue the use of conservation equivalency for summer flounder and maintain the existing scup recreational management measures.

*Description of the Reasons Why Action by the Agency is Being Considered, and a Statement of the Objectives of, and Legal Basis for, This Proposed Rule*

This action proposes recreational harvest measures for the summer flounder and scup fisheries, intended to constrain the fisheries to the recreational harvest limits established for 2017. This action would maintain the current recreational management measures for the 2017 recreational scup fishery and proposes the continuation of conservation equivalency, including non-preferred coastwide measures and precautionary default measures, for the 2017 recreational summer flounder fishery. A complete description of the action, why it is being considered, and the legal basis for this action are contained in the preamble to this proposed rule, and are not repeated here.

*Description and Estimate of the Number of Small Entities To Which the Proposed Rule Would Apply*

A business primarily engaged in for-hire fishing activity is classified as a small business if it has combined annual receipts not in excess of \$7.5 million (NAICS 11411) for Regulatory Flexibility Act (RFA) compliance purposes only. The North American Industry Classification System (NAICS) is the standard used by Federal statistical agencies in classifying business establishments for the purpose of collecting, analyzing, and publishing statistical data related to the U.S. business economy.

This proposed rule affects recreational fish harvesting entities engaged in the summer flounder fishery. Individually-permitted vessels may hold permits for several fisheries, harvesting species of fish that are regulated by several different FMPs, even beyond those

impacted by the proposed action. Furthermore, multiple-permitted vessels and/or permits may be owned by entities affiliated by stock ownership, common management, identity of interest, contractual relationships, or economic dependency. For the purposes of the RFA analysis, the ownership entities, not the individual vessels, are considered to be the regulated entities.

Ownership entities are defined as those entities with common ownership personnel as listed on the permit application. Only permits with identical ownership personnel are categorized as an ownership entity. For example, if five permits have the same seven persons listed as co-owners on their permit applications, those seven persons would form one ownership entity that holds those five permits. If two of those seven owners also co-own additional vessels, that ownership arrangement would be considered a separate ownership entity for the purpose of this analysis.

The current ownership data set used for this analysis is based on calendar year 2015 (the most recent complete year available) and contains average gross sales associated with those permits for calendar years 2013 through 2015.

A description of the specific permits that are likely to be impacted by this action is provided below, along with a discussion of the impacted businesses, which can include multiple vessels and/or permit types.

The ownership data for the for-hire fleet indicate that there were 411 for-hire affiliate firms generating revenues from fishing recreationally for various species during the 2013-2015 period, all of which are categorized as small businesses. Although it is not possible to derive what proportion of the overall revenues came from specific fishing activities, given the popularity of summer flounder as a recreational species, it is likely that revenues generated from summer flounder recreational fishing are important for some, if not all, of these firms. The

three-year average (2013-2015) gross receipts for these small entities ranged from \$10,000 for 121 entities to over \$1 million for 10 entities (highest value was \$2.7 million).

*Description of the Projected Reporting, Record-Keeping, and Other Compliance Requirements of This Proposed Rule*

There are no new reporting or recordkeeping requirements contained in any of the alternatives considered for this action.

*Federal Rules Which May Duplicate, Overlap, or Conflict With This Proposed Rule*

NMFS is not aware of any relevant Federal rules that may duplicate, overlap, or conflict with this proposed rule.

*Description of Significant Alternatives to the Proposed Action Which Accomplish the Stated Objectives of Applicable Statutes and Which Minimize Any Significant Economic Impact on Small Entities*

The proposed measures are designed to result in a 41-percent reduction in harvest, compared to 2016, requiring more restrictive measures that could include higher minimum size limits, lower possession limits, and shorter fishing seasons. Business entities that hold charter/party permits and are active participants in the fishery may be affected if the public demand for summer flounder fishing decreases as a result of more restrictive size limits, possession limits, and season length. Similar effects could result under the non-preferred approach that would enact coastwide measures in Federal waters. Like the conservation equivalency approach, coastwide measures would result in harvest restrictions, compared to 2016, to constrain landings to the reduced 2017 recreational harvest limit. Although there is no way to predict how the demand for charter/party trips might change under either scenario, the coastwide approach reduces the flexibility of states to adopt conservationally equivalent

measures intended to optimize fishing opportunities, which could further impact the demand of summer flounder fishing in some states. Overall, adverse impacts on recreational anglers and party/charter operators are expected under conservation equivalency, but these impacts would be less adverse than if the coastwide measures were implemented.

The proposed action, as required by the regulations governing the FMP, is designed to specify management measures to constrain catch to the 2017 summer flounder recreational harvest limit. The summer flounder regulations require us to publish a proposed rule regarding the overall percent adjustment in recreational landings required for the fishing year, and the Commission's recommendation concerning conservation equivalency, the precautionary default measures, and coastwide measures. The proposed action is consistent with the recommendations of the Council and Commission. The measures proposed herein are intended to meet the recommended adjustments required to constrain recreational catch to the 2017 recreational harvest limits to avoid overfishing of the summer flounder resource as required under the FMP. Accordingly, no other alternatives were considered.

**List of Subjects in 50 CFR Part 648**

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: April 13, 2017.

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Alan D. Risenhoover,

Acting Deputy Assistant Administrator for Regulatory Programs,

National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 648 is proposed to be amended as follows:

**PART 648--FISHERIES OF THE NORTHEASTERN UNITED STATES**

1. The authority citation for part 648 continues to read as follows:

**Authority:** 16 U.S.C. 1801 *et seq.*

2. In § 648.104, paragraph (b) is revised to read as follows:

**§ 648.104 Summer flounder minimum fish sizes.**

\* \* \* \* \*

(b) *Party/charter permitted vessels and recreational fishery participants.* Unless otherwise specified pursuant to § 648.107, the minimum size for summer flounder is 19 inches (48.3 cm) TL for all vessels that do not qualify for a moratorium permit under § 648.4(a)(3), and charter boats holding a moratorium permit if fishing with more than three crew members, or party boats holding a moratorium permit if fishing with passengers for hire or carrying more than five crew members.

\* \* \* \* \*

3. In § 648.105 is revised to read as follows:

**§ 648.105 Summer flounder recreational fishing season.**

Unless otherwise specified pursuant to § 648.107, vessels that are not eligible for a moratorium permit under § 648.4(a)(3), and fishermen subject to the possession limit, may fish for summer flounder from June 1 through September 15. This time period may be adjusted pursuant to the procedures in § 648.102.

4. In § 648.106, paragraph (a) is revised to read as follows:

**§ 648.106 Summer flounder possession restrictions.**

*(a) Party/charter and recreational possession limits.* Unless otherwise specified pursuant to § 648.107, no person shall possess more than four summer flounder in, or harvested from, the EEZ, per trip unless that person is the owner or operator of a fishing vessel issued a summer flounder moratorium permit, or is issued a summer flounder dealer permit. Persons aboard a commercial vessel that is not eligible for a summer flounder moratorium permit are subject to this possession limit. The owner, operator, and crew of a charter or party boat issued a summer flounder moratorium permit are subject to the possession limit when carrying passengers for hire or when carrying more than five crew members for a party boat, or more than three crew members for a charter boat. This possession limit may be adjusted pursuant to the procedures in § 648.102.

\* \* \* \* \*

5. In § 648.107, introductory text to paragraph (a) and paragraph (b) are revised to read as follows:

**§ 648.107 Conservation equivalent measures for the summer flounder fishery.**

(a) The Regional Administrator has determined that the recreational fishing measures proposed to be implemented by the states of Maine through North Carolina for 2017 are the conservation equivalent of the season, minimum size, and possession limit prescribed in §§ 648.102, 648.103, and 648.105(a), respectively. This determination is based on a recommendation from the Summer Flounder Board of the Atlantic States Marine Fisheries Commission.

\* \* \* \* \*

(b) Federally permitted vessels subject to the recreational fishing measures of this part, and other recreational fishing vessels registered in states and subject to the recreational fishing

measures of this part, whose fishery management measures are not determined by the Regional Administrator to be the conservation equivalent of the season, minimum size and possession limit prescribed in §§ 648.102, 648.103(b), and 648.105(a), respectively, due to the lack of, or the reversal of, a conservation equivalent recommendation from the Summer Flounder Board of the Atlantic States Marine Fisheries Commission shall be subject to the following precautionary default measures: Season—July 1 through August 31; minimum size—20 inches (50.8 cm); and possession limit—two fish.

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