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**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

**50 CFR Part 648**

**[Docket No. 170314268-7582-0]**

**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:** Final rule.

**SUMMARY:** In this rule, NMFS implements 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. The intent of these measures is to constrain recreational catch to established limits and prevent overfishing of the summer flounder and scup resources.

**DATES:** This rule is effective [*insert date of publication in the FEDERAL REGISTER*]. The management measures for the 2017 summer flounder and scup recreational fisheries are effective [*insert date of publication in the FEDERAL REGISTER*], through December 31, 2017.

**ADDRESSES:** 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>.

The Final Regulatory Flexibility Analysis (FRFA) consists of the IRFA, public comments and responses contained in this final rule, and the summary of impacts and alternatives contained in this final rule. Copies of the small entity compliance guide are available from John K. Bullard, Regional Administrator, Greater Atlantic Region, National Marine Fisheries Service, 55 Great Republic Drive, Gloucester, MA 01930-2298.

**FOR FURTHER INFORMATION CONTACT:** Emily Gilbert, Fishery Policy Analyst, (978) 281-9244.

**SUPPLEMENTARY INFORMATION:**

**Summary of Final Management Measures**

In this rule, NMFS specifies 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.

NMFS is implementing measures that apply in the Federal waters of the exclusive economic zone. 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 published on December 28, 2015 (80 FR 80689), and for summer flounder published on December 22, 2016 (81 FR 93842).

***Summer Flounder Recreational Management Measures***

NMFS is implementing conservation equivalency to manage the 2017 summer flounder recreational fishery, as proposed on April 19, 2017 (82 FR 18411). These measures are consistent with the recommendation of the Council and Commission. Additional information on

the development of the 2017 measures is provided in the proposed rule and not repeated here.

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 established 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 Commission implemented Addendum XXVIII to its Summer Flounder Fishery Management Plan (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; (5) Delaware, Maryland, and Virginia; and (6) North Carolina. To provide the maximum amount of flexibility and to 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. Addendum XXVIII requires each state or region, with the exception of North Carolina, to increase the 2017 summer flounder minimum size by 1 inch (2.5 cm) from the 2016 size limit. The 2017 measures also reduce the bag limit for most of the states and regions, while the season length remains the same as in 2016. More information on this addendum is available from the Commission ([www.asmf.org](http://www.asmf.org)).

The Commission certified, by letter dated April 5, 2017, that the Addendum XXVIII measures required to be implemented by individual states and regions, when combined, are the

conservation equivalent of coastwide measures that would be expected to result in the 2017 recreational harvest limit being achieved, but not exceeded.

Following this determination, New Jersey proposed and subsequently implemented on May 25, 2017, alternative measures for its state waters (i.e., 18-inch (45.7-cm) fish size, 3-fish bag limit, and a 104-day season). The Summer Flounder Management Board requested these measures be reviewed by the Commission's Technical Committee when they were proposed. The Technical Committee found New Jersey's measures are not the conservation equivalent of Addendum XXVIII measures. Using the Technical Committee's information, the Management Board found that New Jersey's measures were not conservationally equivalent to Addendum XXVIII and recommended New Jersey be found out of compliance with the Commission's FMP. The Commission's Interstate Fisheries Management Policy Board and Commission as a whole met on June 1, 2017, to consider the Management Board's non-compliance recommendation for the state of New Jersey. Both the Policy Board and the Commission found New Jersey out of compliance with the Commission's FMP for summer flounder. The Commission has referred the matter to NMFS under delegation of authority from the Secretary of Commerce, for federal non-compliance review under the provisions of the Atlantic Coastal Fisheries Cooperative Management Act. NMFS will review the Commission's non-compliance referral through a separate process.

Based on the April 5, 2017, recommendation of the Commission, we find that the recreational summer flounder fishing measures required to be implemented for 2017 in state waters are, collectively, the conservation equivalent of the season, minimum size, and possession limit prescribed in §§ 648.104(b), 648.105, and 648.106(a). According to § 648.107(a)(1), vessels subject to the recreational fishing measures are not subject to Federal measures, and

instead are subject to the recreational fishing measures implemented by the state in which they land. Section 648.107(a) is amended through this rule to recognize state-implemented measures as conservation equivalent of the coastwide recreational management measures for 2016. As mentioned above, New Jersey has not implemented Addendum XXVIII's required measures. NMFS' review and findings regarding the non-compliance recommendation for New Jersey will begin with publishing a notice in the *Federal Register*.

In addition, this action implements default coastwide measures (a 19-inch (48.3-cm) minimum size, 4-fish possession limit, and June 1 through September 15 open fishing season), that become effective January 1, 2018, when the 2017 conservation equivalency program expires. These measures will remain effective until replaced by the 2018 recreational management measures in the spring of next year.

### **Scup Recreational Management Measures**

This rule maintains status quo scup measures for the 2017 fishery: A 9-inch (22.9-cm) minimum fish size, 50-fish per person possession limit, and year-round season.

### **Comments and Responses**

On April 19, 2017, NMFS published the proposed 2017 summer flounder and scup recreational management measures for public notice and comments. NMFS received 17 comments, of which 14 were related to measures provided in the proposed rule. New Jersey submitted a comment letter focused on their dissatisfaction with the specific measures outlined in Addendum XXVIII. New Jersey's concerns will be considered through the non-compliance proceedings and are not responded to in this action. Other comments received related to preferences for lower quotas for summer flounder and scup, as well as opinions that the Council favors the commercial industry.

No changes to the proposed specifications were made as a result of these comments.

*Comment 1:* One commenter from the State of Rhode Island stated that the measures contained within Addendum XXVIII were not restrictive enough to constrain catch within the 2017 summer flounder harvest limit. The commenter noted concern that more restrictive measures proposed by the State of Rhode Island were rejected by the Commission's Management Board.

*Response:* The Commission and its Technical Committee has expertise in determining whether or not state-implemented measures are conservationally equivalent to those measures recommended by the Council. The Commission has determined that the addendum's measures achieve conservation equivalency and are likely to constrain catch within the 2017 recreational harvest limit.

*Comment 2:* Eleven commenters raised concerns about state-specific summer flounder regulations which are outside the scope of this action, each specifically requesting that the State of Delaware not be penalized for anything that results from New Jersey's public opposition to the Commission's Addendum.

*Response:* As previously mentioned, the non-compliance determination process for New Jersey will happen outside of this action. Delaware has implemented measures outlined in the Commission's Addendum XXVIII. No further action is required by the State of Delaware for 2017.

*Comment 3:* One commenter was concerned about the summer flounder precautionary default season, stating that he would prefer the season to begin in May, rather than July.

*Response:* Because the Commission did not request that the precautionary default measures be applied to any state, these measures are not applicable for 2017. Instead, this rule

implements the Commission and Council recommended measures, as previously proposed, for conservation equivalency in 2017. The coastwide default measures will be effective to the start of the 2018 fishing year.

### **Classification**

The Administrator, Greater Atlantic Region, NMFS, determined that this final rule is necessary for the conservation and management of the summer flounder fishery and that it is consistent with the Magnuson-Stevens Fisheries Conservation and Management Act (Magnuson-Stevens Act) and other applicable laws.

The Assistant Administrator for Fisheries, NOAA, finds good cause under 5 U.S.C. 553(d)(3) to waive the 30-day delay of effectiveness period for this rule, to ensure that the final management measures are in place as soon as possible. A delay in this rule's effectiveness would unfairly prejudice federally permitted charter/party vessels. Recreational fisheries are already underway for summer flounder and scup. The linchpin of NMFS's decision whether to proceed with the coastwide measures or adopt the conservation equivalent measures is advice from the Commission following review of the individual state plans. Rulemaking has been delayed while final information regarding the status of New Jersey through the Commission's conservation equivalency process has been evaluated. The Commission's Summer Flounder Management Board met on June 1, 2017, to discuss whether or not to find New Jersey out of compliance with Addendum XXVIII. NMFS did not want to cause public confusion by releasing a final rule prior to the Commission's final determination on New Jersey's summer flounder management measures.

Based on historic effort and landings information, and the importance of summer flounder as a recreational fishery target species, participation and landings are expected to be

high from the onset of the fishery that is already underway. Party and charter vessels from the various states are the largest component of the recreational fishery that fish in the EEZ. The Federal coastwide regulatory measures for summer flounder that were codified last year remain in effect until the 2017 recreational measures are made effective. These measures do not achieve the necessary reduction in recreational landings to constrain the fishery to the 2017 recreational harvest limit. Although the states' summer flounder fisheries are already open, additional delay in implementing the measures of this rule will increase confusion on what measures are in place in Federal waters. This will disadvantage federally permitted charter/party vessels and increase the likelihood of illegal landings due to misunderstood regulations. The resulting disconnect in the regulations that exist until this rule's measures are implemented may potentially compromise the mortality objectives of the summer flounder fishery.

Unlike actions that require an adjustment period to comply with new rules, charter/party operators will not have to purchase new equipment or otherwise expend time or money to comply with these management measures. Rather, complying with this final rule simply means adhering to the published management measures for each relevant species of fish while the charter/party operators are engaged in fishing activities.

For these reasons, the Assistant Administrator finds good cause to waive the 30-day delay and to implement this rule upon publication in the *Federal Register*.

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

A FRFA was prepared pursuant to 5 U.S.C. 604(a), and incorporates the IRFA, a summary of any significant issues raised by the public comments in response to the IRFA and NMFS's responses to those comments, and a summary of the analyses completed to support the

action. A copy of the SIR/IRFA is available from the Council (see **ADDRESSES**).

The classification to the proposed rule included a detailed summary of the analyses contained in the IRFA, and that discussion is not repeated here.

### **Final Regulatory Flexibility Analysis**

#### *A Summary of Significant Issues Raised by the Public in Response to the Summary of the Agency's Assessment of Such Issues, and a Statement of Any Changes Made in the Final Rule as a Result*

Our responses to all of the comments received on the proposed rule, including those that raised significant issues with the proposed action, can be found in the Comments and Responses section of this rule. Aside from the comment from the State of New Jersey that will be considered through a separate process, none of the comments received raised specific issues regarding the economic analyses summarized in the IRFA. No changes to the proposed rule were required to be made as a result of public comments.

#### *Description and Estimate of Number of Small Entities to Which the Rule Will Apply*

Available 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 and scup as a recreational species, it is likely that revenues generated from summer flounder and scup 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 Projected Reporting, Recordkeeping, and Other Compliance Requirements*

No additional reporting, recordkeeping, or other compliance requirements are included in this final rule.

*Description of the Steps the Agency has Taken to Minimize the Significant Economic Impact on Small Entities Consistent with the Stated Objectives of Applicable Statutes*

In seeking to minimize the impact of recreational management measures (minimum fish size, possession limit, and fishing season) on small entities (i.e., Federal party/charter permit holders), NMFS is constrained to implementing measures that meet the conservation objectives of the FMP and Magnuson-Stevens Act requirements. The only other summer flounder management measure alternative considered was the less restrictive status quo alternative (i.e., the non-preferred coastwide 2016 measures). State-specific implications of the no-action (coastwide) alternative of an 18-inch (45.7-cm) minimum fish size, a 4-fish bag limit, and closed season of May 1 through September 30, would not achieve the mortality objectives required by the FMP, and, therefore, cannot be continued for the 2017 fishing season.

The conservation equivalency approach implemented by this action allows states some degree of flexibility in the specification of management measures, unlike the application of one set of uniform coastwide measures. The degree of flexibility available to states under conservation equivalency is constrained to a combined suite of minimum fish size, per angler possession limit, and fishing season that will likely constrain catch to the 2017 recreational harvest limit. This provides the opportunity for states to construct measures that achieve the conservation objective while providing a state-specific set of measures in lieu of the one-size-fits-all coastwide measure.

*Small Entity Compliance Guide*

Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996 states

that, for each rule or group of related rules for which an agency is required to prepare a FRFA, the agency shall publish one or more guides to assist small entities in complying with the rule, and shall designate such publications as "small entity compliance guides." The agency shall explain the actions a small entity is required to take to comply with a rule or group of rules.

As part of this rulemaking process, a small entity compliance guide will be sent to all holders of Federal party/charter permits issued for the summer flounder and scup fisheries. In addition, copies of this final rule and guide (*i.e.*, permit holder letter) are available from NMFS (see **ADDRESSES**) and at the following website: <http://www.greateratlantic.fisheries.noaa.gov>.

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

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: July 3, 2017.

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Chris Oliver,

Assistant Administrator for Fisheries,

National Marine Fisheries Services.

For the reasons set out in the preamble, 50 CFR part 648 is 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. Section 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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