



DEPARTMENT OF COMMERCE

## National Oceanic and Atmospheric Administration

### 50 CFR Part 648

[Docket No. 210503-0094]

RIN 0648-BK32

### Fisheries of the Northeastern United States; Recreational Management Measures for the Summer Flounder Fishery; Fishing Year 2021

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

**ACTION:** Final rule.

**SUMMARY:** NMFS announces management measures for the 2021 summer flounder recreational fishery. The implementing regulations for this fishery require NMFS to publish recreational measures for the fishing year. The intent of this action is to achieve, but not exceed, the 2021 summer flounder recreational harvest limit and thereby prevent overfishing on the summer flounder stock.

**DATES:** This rule is effective May 5, 2021.

**FOR FURTHER INFORMATION CONTACT:** Emily Keiley, Fishery Policy Analyst, (978) 281-9116.

**SUPPLEMENTARY INFORMATION:** The Mid-Atlantic Fishery Management Council and the Atlantic States Marine Fisheries Commission jointly manage summer flounder. The Council and Commission's Summer Flounder Management Board meet jointly each year to recommend recreational management measures for summer flounder.

In this final rule, NMFS is implementing conservation equivalency to manage the 2021 summer flounder recreational fishery, as proposed on April 6, 2021 (86 FR 17764). The approval of conservation equivalency means that we are waiving Federal summer flounder recreational measures in Federal waters for all federally permitted summer

flounder party/charter vessels, regardless of where they fish. States, through the Commission, are collectively implementing measures designed to constrain landings to the 2021 recreational harvest limit. Vessels fishing in Federal waters and Federal party/charter vessels are subject to the regulations in the state they land. These measures are consistent with the recommendations of the Council and the Commission. Additional information on the development of these measures is provided in the proposed rule and not repeated here.

Conservation equivalency, as established by Framework Adjustment 2 (66 FR 36208; July 11, 2001), allows each state to establish its own recreational management measures (possession limits, 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 Federal coastwide measures. Framework Adjustment 6 (71 FR 42315; July 26, 2006) allows states to form regions for conservation equivalency in order to minimize differences in regulations for anglers fishing in adjacent waters.

Similar to the 2016-2020 program, the 2021 management program adopted by the Commission divides the recreational fishery into six management regions: 1) Massachusetts; 2) Rhode Island; 3) Connecticut-New York; 4) New Jersey; 5) Delaware-Virginia; and 6) North Carolina. Each state within a region must implement identical or equivalent measures (fish size, bag limit, and fishing season length), and the combination of those measures must be sufficient to achieve, but not exceed, the recreational harvest limit.

Based on the Commission's recommendation, we find that the 2021 recreational fishing measures required to be implemented in state waters are, collectively, the conservation equivalent of the season, fish size, and possession limit prescribed in 50 CFR 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 final rule to recognize state-implemented measures as the conservation equivalent of the Federal coastwide recreational management measures for 2021.

In addition, this action reaffirms the default coastwide measures (a 19-inch (48.3-cm) minimum size, four-fish possession limit, and May 15 through September 15 open fishing season), that becomes effective January 1, 2022, upon the expiration of the 2021 conservation equivalency program.

### **Changes from the Proposed Rule**

There are no changes from the proposed rule.

### **Comments and Responses**

NMFS received seven comments on the proposed rule, none of which were directly related to the proposed measures. Four comments were related to state-specific measures and offered concerns over the minimum fish sizes and a perceived lack of recognition of changing fish distribution. Two comments relayed concerns about commercial fishing regulations and general complaints over the management of summer flounder. One commenter discussed a number of ongoing management actions that may impact the future management of the recreational summer flounder fishery. Although there may be future changes to recreational summer flounder management, at this time we are required to either approve conservation equivalency, as this final rule does, or implement coastwide measures. None of these commenters suggested the adoption of coastwide measures or the imposition of the precautionary default measures, which would be alternatives to the conservational equivalent approach of the proposed rule. All comments received were outside the scope of this action. No changes to the final rule are made based on the submitted comments.

## **Classification**

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

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

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.

The Federal coastwide regulatory measures for recreational summer flounder fishing that were codified last year (85 FR 36802; June 18, 2020) remain in effect until the decision to waive Federal measures for 2021 is made effective by this final rule. Many states have already implemented their conservationally equivalent 2021 measures; a delay in implementing the measures of this rule will increase confusion on what measures are in place in Federal waters. Inconsistencies between the states' measures and the Federal measures could lead to potential confusion and misunderstanding of the applicable regulations and could increase the likelihood of noncompliant landings. Additionally, the Federal measures currently in place are more restrictive than many of the measures in state waters, unnecessarily disadvantaging federally-permitted vessels, which are subject to these more restrictive measures until this final rule is effective.

An adjustment period is not needed for regulated entities to comply with this rule. Recreational and charter/party operators will not need new equipment or otherwise need to expend time or money to comply with these management measures. Rather, complying with this final rule simply requires adhering to the published state management measures for summer flounder while the recreational and charter/party

operators are engaged in fishing activities.

For these reasons, the Assistant Administrator finds good cause to waive the 30-day delay of effectiveness period and to implement this rule upon filing for public inspection in the **Federal Register**.

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration during the proposed rule stage that this action would not have a significant economic impact on a substantial number of small entities. The factual basis for the certification was published in the proposed rule and is not repeated here. A final regulatory flexibility analysis is not required and none has been prepared.

This final rule contains no information collection requirements under the Paperwork Reduction Act of 1995.

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

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: May 3, 2021.

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Samuel D. Rauch III,  
Deputy Assistant Administrator for Regulatory Programs,  
National Marine Fisheries Service.

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 § 648.107, revise paragraph (a) introductory text 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 2021 are the conservation equivalent of the season, size limits, and possession limit prescribed in §§ 648.104(b), 648.105, and 648.106. This determination is based on a recommendation from the Summer Flounder Board of the Atlantic States Marine Fisheries Commission.

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