



DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 260422-0108]

RIN 0648-BN55

Magnuson-Stevens Fishery Conservation and Management Act Provisions; Fisheries of the Northeastern United States; Framework Adjustment 18 to the Summer Flounder, Scup, and Black Sea Bass Fishery Management Plan

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

ACTION: Final rule.

SUMMARY: NMFS announces the implementation of Framework Adjustment 18 to the Summer Flounder, Scup, and Black Sea Bass Fishery Management Plan (FMP). This framework modifies exemptions to the minimum mesh size requirements in the commercial summer flounder fishery. The purpose of this action is to increase operational flexibility for the commercial fishing industry.

DATES: This rule is effective [*insert date of filing for public inspection in the Federal Register*].

ADDRESSES: Copies of the draft Framework Adjustment 18 to the Summer Flounder, Scup, and Black Sea Bass FMP, including the Environmental Assessment and the Regulatory Impact Review (EA/RIR) prepared in support of this action are available from Dr. Christopher M. Moore, Executive Director, Mid-Atlantic Fishery Management Council, Suite 201, 800 North State Street, Dover, DE 19901. The supporting documents are also accessible via the internet at: <https://www.mafmc.org/actions/summer-flounder-commercial-mesh-exemptions>.

FOR FURTHER INFORMATION CONTACT: Laura Deighan, Fishery Policy

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SUPPLEMENTARY INFORMATION:

Background

The Mid-Atlantic Fishery Management Council (Council) and the Atlantic States Marine Fisheries Commission (Commission) cooperatively develop management measures for the summer flounder, scup, and black sea bass fisheries in state and Federal waters. Pursuant to the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) and the Administrative Procedure Act, NMFS reviews Council recommendations and, after taking public comment, implements approved fishery management actions for Federal waters.

In this final rule, NMFS is implementing Framework Adjustment 18 to the Summer Flounder, Scup, and Black Sea Bass FMP (*i.e.*, the Summer Flounder Commercial Mesh Exemption Framework Action). The Summer Flounder Commercial Mesh Exemption Framework Action implements changes to the two existing exemptions from the minimum mesh size requirements in the commercial summer flounder fishery. The goal of this framework is to modernize the exemptions to be consistent with current gear use and fishing practices, providing the industry with better access to the exemptions and greater operational flexibility. These changes are consistent with the original intent of the minimum mesh size exemptions, which is to reduce summer flounder discards in other fisheries without increasing the catch of smaller summer flounder.

The implementing regulations for the FMP are found at 50 CFR part 648 subpart G. Pursuant to Magnuson-Stevens Act section 303(b)(4), in order to protect smaller summer flounder, the summer flounder regulations at § 648.108(a) specify the minimum allowable mesh size when using an otter trawl in the commercial summer flounder fishery. The regulations at § 648.108(b) provide two exemptions from the minimum mesh size requirements: (1) the Small-Mesh Exemption Program (SMEP),

which provides exemptions within a defined geographical area from November through April for vessels holding an appropriate Letter of Authorization (LOA) issued by the Regional Office for this purpose; and (2) the flynet exemption, which allows exemptions for vessels using a specific net configuration. Additional information on the history and details of these programs is provided in the proposed rule (90 FR 44618, September 16, 2025) and is not repeated here.

Under the rulemaking authority of Magnuson-Stevens Act sections 303(c) and 304(b), this action implements three modifications to the existing summer flounder minimum mesh size exemptions, as requested by the fishing industry and recommended by the Council: (1) expansion of the geographical area of the SMEP; (2) revision of the annual evaluation process for the SMEP; and (3) revision of the definition of a flynet within the summer flounder regulations. Under the Secretarial rulemaking authority of Magnuson-Stevens Act section 305(d), which authorizes NMFS to promulgate regulations necessary to carry out an FMP, this action also implements three administrative changes related to the minimum mesh size exemptions: (1) allowance for a minimum LOA period of less than 7 days to provide added operational flexibility to the industry; (2) implementation of the use of a flynet vessel trip reporting (VTR) code for ease of tracking fishing activity under the flynet exemption; and (3) revision of the criterion used to evaluate whether to terminate the flynet exemption in order to more accurately align with the original FMP amendment and the original objective of the action. These administrative changes support the implementation of the framework, alleviate an administrative constraint that is no longer necessary, and correct an error in the regulations.

Final Measures

SMEP: Area Expansion

This action moves the western boundary of the SMEP area approximately 5 miles

(8 kilometers (km)) west for the portion of the area south of Long Island Sound. The coordinates of the revised area are found in § 648.108, as implemented by this rule. The use of bottom-tending gear is prohibited in the Frank R. Lautenberg Deep-Sea Coral Protection Area, and this action would not modify the portion of the SMEP south of that area nor allow SMEP trips in the Coral Protection Area. The revision adds approximately 4,943 km² (1,441 nautical miles²) of accessible waters to the SMEP area after excluding the deep-sea coral zone.

Members of the fishing industry requested this change to provide greater flexibility to those fishing in multiple fisheries, noting that the SMEP has reduced summer flounder regulatory discards and is critical for the economic stability of their businesses. The expansion of the SMEP area is intended to allow for greater retention of summer flounder in areas where summer flounder permit holders are currently participating in other fisheries using mesh below the summer flounder minimum mesh size. The change is not expected to pose a risk to the health of the summer flounder stock because: (1) overall summer flounder landings are constrained by annual catch limits; (2) the summer flounder regulations prohibit the retention of undersized summer flounder; and (3) the regulations allow for the SMEP to be temporarily terminated if data indicate that SMEP participants are discarding summer flounder above a specified threshold. This action additionally corrects a citation referring to net stowage requirements in section 648.14(n)(2)(iii)(B).

SMEP: Discard Threshold Evaluation

This action updates the annual review criteria for the SMEP. The current regulations authorize the Regional Administrator to terminate the SMEP for the remainder of the season when a threshold of an average of 10 percent of summer flounder catch is discarded per SMEP trip (by weight). This action increases the discard threshold to an average of 25 percent of the summer flounder catch per SMEP trip (by weight).

This change is based on improved data quality and availability. The increase to the evaluation threshold is not expected to result in significant increases in summer flounder discards and would ensure that termination of the SMEP is considered when SMEP discards increase beyond what is considered normal relative to the summer flounder fishery as a whole.

When the discard threshold is reached, the Monitoring Committee will lead the preparation of an analysis of SMEP discards before the Regional Administrator decides whether to temporarily revoke the SMEP. Alternatively, if NMFS leads the preparation of the analysis, then the Monitoring Committee will review that analysis ahead of the Regional Administrator's decision. Implementing a Monitoring Committee-led review of SMEP discards will allow the Regional Administrator to consider other relevant information before deciding whether to temporarily revoke the SMEP. These changes are intended to prevent premature SMEP closures and unnecessary economic harm to permit holders who rely on the SMEP.

Finally, this action also changes the timing of the SMEP revocation, authorizing the Regional Administrator to terminate the exemption for the remainder of the current SMEP season or the following SMEP season. The current regulations allow the Regional Administrator to terminate the SMEP for only the remainder of the current season. This action would add an option to terminate the SMEP for the following SMEP season based on the lag in data availability and the timeline required to undertake an in-depth review of SMEP discards.

SMEP: LOA 7-Day Minimum

This action updates the SMEP participation period, allowing the Regional Administrator to specify a shorter minimum participation period of between 1 and 7 days. These changes would occur as needed alongside development and further advancement of paperless LOAs. The 7-day minimum was originally implemented due to the

administrative burden of processing paper-based LOA applications and withdrawal requests. However, the 7-day minimum participation period limits the industry's ability to adjust its behavior based on real-time fishing conditions. This administrative change also allows for the minimum participation period to be reduced when technology that enables faster LOA processing becomes available. On April 1, 2026, regional NMFS staff implemented paperless LOAs and integrated them into the region's electronic permitting system. This updated system automatically validates qualification criteria and issues LOAs, which should obviate the need for the 7-day minimum. This rule will accommodate the paperless LOA process by allowing for a minimum LOA period from 7 days to as short as 1 day.

Flynet Exemption: Flynet Definition

This action changes the regulatory definition of a "flynet" by removing the requirements for a specified number of seams and the maximum mesh size within the summer flounder regulations at § 648.108(b)(2). Industry feedback indicated that the current definition does not reflect modern net configurations and that similar nets that align with the original objective of the flynet exemption are used throughout the region. Based on consultations with members of the fishing industry that use the gear, the updated definition will be "an otter trawl with: (1) large mesh in the wings that measures 8 inches (20 cm) or greater; (2) a first body (belly) section that has at least 280 inches (711 cm) of mesh behind the sweep where the mesh size is at least 8 inches (20 cm); and (3) mesh that decreases in size throughout the body of the net toward the codend." As with the proposed SMEP alterations, this change is not expected to pose a risk to the health of the summer flounder stock given the summer flounder annual catch limits, summer flounder minimum size requirements, and the Regional Administrator's authority to rescind the flynet exemption for the remainder of the year when a specific threshold is reached.

Flynet Exemption: Termination Evaluation

This action revises the evaluation criterion in § 648.108(b)(2)(iv) used to determine whether the termination of the flynet exemption may be warranted, replacing “discards” with “catch.” In amendment 2 to the FMP, the Council recommended that the Regional Administrator consider terminating the flynet exemption when the annual average summer flounder catch exceeds 1 percent of the total catch in the flynet fishery. However, the regulations provide a criterion of summer flounder discards greater than 1 percent of summer flounder catch in the flynet fishery. The record for that amendment does not indicate that NMFS rejected the Council’s recommendation nor does it provide a rationale for such a change. Rather, the difference between the FMP and regulations likely resulted from an administrative error which this rule will correct.

Flynet Exemption: Vessel Trip Reporting

This action implements a flynet gear code to identify trips taken under the flynet exemption more accurately through VTRs. Currently, evaluation of the flynet exemption relies on the vessel operator self-reporting the net type during observed trips. Given the limited number of observed trips and the variation in net terminology throughout the region, accurate identification of flynet trips has been challenging. This change will support improved monitoring of the flynet exemption, which will result in improved decision making regarding termination of, or any future modifications to, the exemption.

Comments

NMFS received three comments on the proposed rule (90 FR 44618, September 16, 2025) from four individuals. Two comments expressed support for the proposed action. One comment written by two individuals expressed partial support while offering concerns about bycatch reduction and stakeholder input.

Comment 1: One comment requested that the action include a gradual transition to requiring the use of semi-pelagic otterboards to reduce bycatch and mitigate the

environmental impacts of bottom-tending gear on seabed habitats.

Response: This action was initiated after the Council's fall 2023 review of summer flounder commercial mesh regulations, which identified necessary changes to the SMEP based on feedback from the commercial fishing industry. The scope of this action was set after multiple rounds of public input, Committee discussion, and Council review. In order to comply with the National Environmental Policy Act, an EA was prepared at the proposed rule stage that found no significant impacts of all alternative proposed actions on the quality of the human environment. The goals described in this comment fall outside of the purpose and need for this action that was evaluated in the EA. In addition, NMFS determined that the rule is not expected to notably change fishing locations, amount of gear in the water, or timing of fishing in a manner that would modify existing impacts to habitat. Finally, NMFS determined that this rule is in compliance with section 7(d) of the Endangered Species Act (ESA) because no incentive is provided for vessels to increase effort, substantially change the area fished, or change the gear types used to catch summer flounder, so no new or elevated interaction risks with ESA-listed species are expected to occur. While the commenter can seek the Council to pursue this approach in a future action, NMFS has determined that implementing further changes to gear regulations is outside the scope of this rule.

Comment 2: The same commenters also requested that the rule conduct a more thorough cost-benefit analysis by considering a wider range of stakeholders, including researchers or conservationists.

Response: Members of the Council, Advisory Panel, and Monitoring Committee represent a wide range of fishery stakeholders, including researchers, environmental conservation professionals, and representatives of the recreational and commercial fishing industries. Actions such as this rule are developed through meetings that are open to public comment and documented on the Council's website. The Council prepared

thorough analyses of the action's impacts on habitat, protected resources, and human communities as part of its EA, RIR, and Regulatory Flexibility Act compliance. NMFS has determined that these analyses are sufficient to support this final rule.

Changes from the Proposed Rule

There are no changes from the proposed rule.

Classification

NMFS is issuing this rule pursuant to sections 304(b) and 305(d) of the Magnuson-Stevens Act. Section 304(b) provides specific authority for implementing this action. Sections 304(b) and 305(d) of the Magnuson-Stevens Act authorize NMFS to review and, if warranted, approve and implement rules and regulations deemed necessary by the Council. Pursuant to section 305(d) of the Magnuson-Stevens Act, this action is necessary to carry out the FMP because the administrative changes proposed under this authority support implementation of the Council's proposed changes, alleviate an administrative constraint that is no longer necessary, and correct an error in the regulations. The NMFS Assistant Administrator has determined that this final rule is consistent with the FMP, other provisions of the Magnuson-Stevens Act, and other applicable law.

Pursuant to 5 U.S.C. 553(d)(1) and (d)(3), the 30-day delay in effective date requirement does not apply to this rule because: (1) the rule will relieve a restriction on fishery participants; and (2) there is good cause to implement it immediately. This rule relieves a restriction by expanding the area within which the SMEP exception applies and eliminating the restriction for a 7-day minimum LOA period. SMEP exemptions allow summer flounder permit holders using smaller mesh in other fisheries to retain more summer flounder, thus converting discards to landings. This rule expands the SMEP area by 4,943 km², allowing greater retention of summer flounder in areas where summer flounder permit holders are participating in other fisheries using mesh below the summer

flounder minimum mesh size. The 7-day minimum participation period for SMEP LOAs previously limited industry's ability to respond to real-time fishing conditions. Relief of this restriction therefore provides greater flexibility for fishery participants. There is good cause to implement this rule immediately because modernizing the regulatory definition of exempted flynet gear aligns the exempted flynet gear with current fishing operations. This new definition reflects modern net configurations that serve the original objective of the flynet exemption and are already in use throughout the region. The updated flynet gear definition is expected to reduce potential confusion and/or inadvertent violations.

For the reasons above, the 30-day delay in effective date does not apply to this rule.

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

This final rule is considered an E.O. 14192 deregulatory action.

NMFS has determined that this action would not have a substantial direct effect on one or more Indian Tribes, on the relationship between the Federal Government and Indian Tribes, or on the distribution of power and responsibilities between the Federal Government and Indian Tribes; therefore, consultation with Tribal officials under E.O. 13175 is not required, and the requirements of sections (5)(b) and (5)(c) of E.O. 13175 also do not apply. A Tribal summary impact statement under section (5)(b)(2)(B) and section (5)(c)(2)(B) of E.O. 13175 is not required and has not been prepared.

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. No comments were received regarding this certification. As a result, a regulatory flexibility analysis was not required and none was

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: April 23, 2026.

Samuel D. Rauch III,

Deputy Assistant Administrator for Regulatory Programs,

National Marine Fisheries Service.

For the reasons set out in the preamble, NMFS amends 50 CFR part 648 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 § 648.4, revise paragraph (a)(3)(iii) to read as follows:

§ 648.4 Vessel permits.

(a) * * *

(3) * * *

(iii) *Exemption permits.* Owners of summer flounder vessels seeking an exemption from the minimum mesh requirement under the provisions of § 648.108(b)(1) must request a letter of authorization (LOA) from the Regional Administrator. Vessels must be enrolled in the exemption program for a minimum period, specified by the Regional Administrator, of up to 7 days. The Regional Administrator may impose temporary additional procedural requirements by publishing a notification in the **Federal**

Register. If a summer flounder charter or party requirement of this part differs from a summer flounder charter or party management measure required by a state, any vessel owners or operators fishing under the terms of a summer flounder charter/party vessel permit in the EEZ for summer flounder must comply with the more restrictive requirement while fishing in state waters, unless otherwise authorized under § 648.107.

* * * * *

3. In § 648.14, revise paragraphs (n)(2)(iii)(B) and (C) to read as follows:

§ 648.14 Prohibitions.

* * * * *

(n) * * *

(2) * * *

(iii) * * *

(B) Fish with or possess nets or netting that are modified, obstructed, or constricted, if fishing with an exempted net described in § 648.108, unless the nets or netting are stowed in accordance with § 648.108(e).

(C) Fish outside of the area specified in § 648.108(b)(1)(i) if exempted from the minimum mesh requirement specified in § 648.108 by a summer flounder Small-Mesh Exemption Program letter of authorization.

* * * * *

4. In § 648.102, revise paragraph (a)(5) to read as follows:

§ 648.102 Summer flounder specifications.

(a) * * *

(5) Adjustments to the exempted area boundary and season specified in § 648.108(b)(1), based on data reviewed by the Summer Flounder Monitoring Committee during the specification process, to prevent discarding of more than an average of 25 percent of the summer flounder catch per trip, by weight, from all SMEP trips.

* * * * *

5. In § 648.106, revise paragraph (d) to read as follows:

§ 648.106 Summer flounder possession restrictions.

* * * * *

(d) *Commercially permitted vessel possession limits.* Owners and operators of otter trawl vessels issued a permit under § 648.4(a)(3) that fish with or possess nets or pieces of net on board that do not meet the minimum mesh requirements and that are not stowed in accordance with § 648.108(e), may not retain 100 lb (45.4 kg) or more of summer flounder from May 1 through October 31, or 200 lb (90.7 kg) or more of summer flounder from November 1 through April 30, unless the vessel is fishing under an exemption, as specified in § 648.108(b). Summer flounder on board these vessels must be stored so as to be readily available for inspection in standard 100-lb (45.3-kg) totes or fish boxes having a liquid capacity of 18.2 gal (70 L), or a volume of not more than 4,320 inches³ (2.5 ft³ or 70.79 cm³).

6. In § 648.108, revise paragraph (b) to read as follows:

§ 648.108 Summer flounder gear restrictions.

* * * * *

(b) *Exemptions.* Unless otherwise restricted by this part, the minimum mesh-size requirements specified in paragraph (a)(1) of this section do not apply to:

(1) A vessel issued a summer flounder moratorium permit that meets the requirements of paragraph (b)(1)(ii) of this section, fishing from November 1 through April 30 in the Small-Mesh Exemption Area, as defined in paragraph (b)(1)(i) of this section.

(i) *Small-Mesh Exemption Area.* The Small-Mesh Exemption Area is the area east or north, as appropriate, of a line that follows longitude 72°30' W from the coast of Connecticut south to latitude 40°50.24' N and then follows straight lines connecting the

following points in the order stated until it intersects with the outer boundary of the U.S. EEZ (copies of a map depicting the area are available upon request from the Regional Administrator):

Table 1 to paragraph (b)(1)(i)		
Point	Latitude	Longitude
SMEA1	40°50.24' N	72°30' W
SMEA2	40°48.04' N	72°37' W
SMEA3	39°20' N	72°37' W
SMEA4	39°4.38' N	72°47.22' W
SMEA5	38°28.65' N	73°29.37' W
SMEA6	38°29.72' N	73°30.65' W
SMEA7	38°26.32' N	73°33.44' W
SMEA8	38°13.15' N	73°49.77' W
SMEA9	38°13.74' N	73°50.73' W
SMEA10	38°11.98' N	73°52.65' W
SMEA11	37°29.53' N	74°29.95' W
SMEA12	37°29.43' N	74°30.29' W
SMEA13	37°6.97' N	74°40.8' W
SMEA14	37°5.83' N	74°45.57' W
SMEA15	37°4.43' N	74°41.03' W
SMEA16	37°3.5' N	74°40.39' W
SMEA17	37° N	74°43' W
SMEA18	37° N	72°30' W
SMEA19	^(a)	72°30' W

^a U.S. EEZ longitude, approximately 33°1.30' N.

(ii) Requirements.

(A) A vessel fishing in the Summer Flounder Small-Mesh Exemption Area under this exemption must have on board a valid LOA issued by the Regional Administrator.

(B) The vessel must be enrolled in the exemption program for a minimum period, specified by the Regional Administrator, of up to 7 days.

(C) The vessel may not fish for any species outside of the Small-Mesh Exemption Area, as described in paragraph (b)(1)(i) of this section, during the time the LOA is effective. Vessels may resume fishing outside the Small-Mesh Exemption Area once the LOA has expired. Vessels may withdraw from the SMEP before the LOA expiration date in accordance with the terms outlined in the LOA. Vessels participating in the Small-Mesh Exemption Program in accordance with this section and § 648.4(a)(3)(iii) may transit the area west or south of the Small-Mesh Exemption Area if the vessel's fishing gear is stowed in a manner prescribed under § 648.108(e), so that it is not “available for immediate use” outside the exemption area.

(iii) *Evaluation and Termination.* If data indicate that vessels fishing under the Small-Mesh Exemption Program are discarding more than an average of 25 percent, by weight, of their entire catch of summer flounder per Small-Mesh Exemption Program trip, the Monitoring Committee shall coordinate or conduct a review of the exemption program. The review shall be completed no later than the next series of specifications setting or review meetings and presented to the ASMFC Summer Flounder, Scup and Black Sea Bass Management Board and MAFMC. After considering the Monitoring Committee’s review and the recommendations of the Board and Council, the Regional Administrator may terminate the exemption for the remainder of the season or for the following exemption season. If the Regional Administrator makes such a determination, he/she shall publish notification of the termination in the **Federal Register**, in compliance with the requirements of the Administrative Procedure Act.

(2) A vessel fishing with an otter trawl fly net with the following configuration is exempt from the summer flounder minimum mesh size requirements, provided the vessel documents use of a flynet on its Vessel Trip Report (VTR) and has no other nets or

netting with mesh smaller than 5.5 inches (14.0 cm) on board:

(i) *Configuration.*

(A) The net has large mesh in the wings that measures 8 inches (20.3 cm) or greater.

(B) The first body section (belly) of the net has at least 280 inches (711.2 cm) of mesh behind the sweep where the mesh size is at least 8 inches (20.3 cm).

(C) The mesh decreases in size throughout the body of the net toward the codend.

(ii) *Evaluation and Termination.* The Regional Administrator may terminate this exemption if he/she determines, after a review of relevant data, that the annual average summer flounder catch exceeds 1 percent of the annual average total catch from all vessels fishing under the exemption. If the Regional Administrator makes such a determination, he/she shall publish notification in the **Federal Register**, in compliance with the requirements of the Administrative Procedure Act, terminating the exemption for the remainder of the calendar year.

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