



**BILLING CODE 3510-22-P**

**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

**RIN 0648-XF479**

**Atlantic Coastal Fisheries Cooperative Management Act Provisions; Summer Flounder Fishery**

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

**ACTION:** Notice of non-compliance referral.

**SUMMARY:** NMFS announces that on June 12, 2017, we received a letter from the Atlantic States Marine Fisheries Commission finding the State of New Jersey out of compliance with Addendum XXVIII to the Summer Flounder, Scup, and Black Sea Bass Interstate Fishery Management Plan and requesting Federal non-compliance review under the provisions of the Atlantic Coastal Fisheries Cooperative Management Act. This notice is necessary to alert the public that NMFS has received and is reviewing the referral of non-compliance from the Commission. The intended effect of this notice is to inform the public of the Commission's recommendation to the Secretary of Commerce and to outline both the decision-making process that will be used and potential outcomes of the non-compliance review.

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

**SUPPLEMENTARY INFORMATION:**

The Atlantic States Marine Fisheries Commission (Commission) developed Addendum XXVIII to the Summer Flounder, Scup, and Black Sea Bass Interstate Fishery Management Plan (ISFMP) to specify 2017 recreational management measures (i.e., regional conservation

equivalency) for summer flounder, which is currently experiencing overfishing. Addendum XXVIII, which was adopted by the Commission in February 2017, retained management regions, consistent with those established in 2016: (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 continue to adequately address the state-by-state differences in fish availability, each state in a region is required by the Commission to establish identical management measures (i.e., fishing season length, minimum size, and possession limit). Addendum XXVIII requires each state or region, with the exception of North Carolina, to increase the summer flounder minimum size in 2017 by 1 inch (2.5 cm) relative to 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.

These measures were designed to constrain coastwide catch of summer flounder to within the 2017 recreational harvest limit. For New Jersey, Addendum XXVIII requires the following measures:

- Shore mode for Island Beach State Park only: 17-inch (43.2-cm) minimum size limit, 2-fish possession limit, and 128-day open season.
- Delaware Bay only (west of the COLERG line): 18-inch (45.7-cm) minimum size limit, 3-fish possession limit, and 128-day open season.
- All other marine waters (east of the COLERG line): 19-inch (48.3-cm) minimum size limit, 3-fish possession limit, and 128-day open season.

The Commission required New Jersey to implement these measures in state waters by May 25, 2017. Instead, New Jersey implemented size limits that are one-inch lower in each area described in the bullets above and instituted a season of 104 days. The bag limits remain the

same as those required under the addendum. On June 1, 2017, the Commission found the State of New Jersey out of compliance for not fully and effectively implementing and enforcing the Addendum XXVIII measures. The Commission notified NMFS of its non-compliance finding by letter on June 12, 2017.

Federal response to a Commission non-compliance referral is governed by the Atlantic Coastal Fisheries Cooperative Management Act (Atlantic Coastal Act). Under the Atlantic Coastal Act, the Secretary of Commerce must make two findings within 30 days after receiving the non-compliance referral. First, the Secretary must determine whether the state in question (in this case, New Jersey) has failed to carry out its responsibilities under the ISFMP. Second, the Secretary must determine whether the measures that the State has failed to implement or enforce are necessary for the conservation of the fishery in question (in this case, summer flounder). If NMFS determines that New Jersey has failed to carry out its responsibilities under the ISFMP, and if the measures it failed to implement are necessary for conservation, then, according to the Atlantic Coastal Act, NMFS must declare a moratorium on summer flounder fishing in New Jersey waters. Further, the moratorium must become effective within six months of the date of the Secretary's non-compliance determination. If New Jersey is found out of compliance by NMFS and later implements Addendum XXVIII measures, the Atlantic Coastal Act allows the state to petition the Commission that it has come back into compliance. If the Commission concurs that New Jersey has come into compliance, the Commission will notify the Secretary. If the Secretary concurs, the moratorium will be withdrawn.

NMFS has notified New Jersey, the Commission, and the Mid-Atlantic Fishery Management Council in separate letters, of its receipt of the Commission's non-compliance referral. NMFS solicits comments from the Commission and Council to the extent either is

interested in providing comments on the non-compliance referral. NMFS also indicated to New Jersey that it is entitled to meet with and present its comments directly to NMFS, if so desired.

NMFS intends to make its non-compliance determination, including supporting rationale, on or about July 11, 2017, which is 30 days after receipt of the Commission's non-compliance referral. NMFS will announce its determination by **Federal Register** notice immediately thereafter. To the extent that NMFS makes an affirmative non-compliance finding, NMFS will announce the effective date of the moratorium in that **Federal Register** notice.

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

Dated: June 19, 2017.

Emily H. Menashes,  
Acting Director, Office of Sustainable Fisheries,  
National Marine Fisheries Service.

[FR Doc. 2017-13026 Filed: 6/19/2017 4:15 pm; Publication Date: 6/22/2017]