



**BILLING CODE 3510-22-P**

**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

**50 CFR Part 648**

**[Docket No. 180220193-8193-01]**

**RIN 0648-BH79**

**Fisheries of the Northeastern United States; Recreational Management Measures for the Summer Flounder, Scup, and Black Sea Bass Fisheries; Fishing Year 2018**

**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 2018 summer flounder, scup, and black sea bass 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 summer flounder, scup, and black sea bass.

**DATES:** Comments must be received by *[insert date 15 days after date of publication in the FEDERAL REGISTER]*.

**ADDRESSES:** You may submit comments on this document, identified by NOAA-NMFS-2018-0038, 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-2018-0038](http://www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2018-0038),
- Click the “Comment Now!” icon, complete the required fields

- Enter or attach your comments.

- OR -

*Mail:* Submit written comments to Michael Pentony, 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 Environmental Assessment (EA) 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.mafmc.org/s/2018-sf-bsb-rec-measures-EA.pdf>.

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

#### **SUPPLEMENTARY INFORMATION:**

##### **Summary of Proposed Management Measures**

In this rule, NMFS proposes management measures for the 2018 summer flounder, scup, and black sea bass recreational fisheries consistent with the recommendations of the Mid-Atlantic Fishery Management Council (Council) and the Atlantic States Marine Fisheries

Commission (Commission). 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, scup, and black sea bass 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 2018 recreational harvest limits established in a final rule published on December 22, 2017 (82 FR 60682).

For summer flounder, we are proposing to continue the use of conservation equivalency measures for all the states, through the Commission, to determine the most appropriate measures to constrain landings to the 2018 recreational harvest limit. For scup, we are proposing to maintain the measures currently in place for 2017. For black sea bass, we propose to maintain the current minimum size and possession limits, but we propose to remove the current September 22-October 22 closure, which would result in an open season from May 15- December 31. The black sea bass measures are contingent upon the Commission constraining catch to the 2018 recreational harvest limit.

### **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 2018 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. 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 management target 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 50 CFR 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 2018 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. Additionally, we will publish our determination as a final rule in the *Federal Register* to establish the 2018 recreational measures for these fisheries.

### **2018 Summer Flounder Recreational Management Measures**

NMFS proposes to implement the Council's and Commission's recommendation to manage the 2018 summer flounder recreational fishery using conservation equivalency. The 2018 summer flounder recreational harvest limit is 4.42 million lb (2,004 mt), an increase from the 2017 harvest limit of 3.77 million lb (1,711 mt). Preliminary estimates indicate that the 2017 recreational landings are 3.10 million lb (1,406 mt). These 2017 projected landings are based on preliminary Marine Recreational Information Program (MRIP) estimates through Wave 6 (November and December 2017).

The Council and Commission approved conservation equivalency at their joint meeting, held in December 2017. At this meeting, the Board voted to maintain the provisions of Addendum XXVIII to its FMP, which continues regional conservation equivalency for fishing year 2018. The Commission maintained regions that are consistent with those in place since 2016: (1) Massachusetts; (2) Rhode Island; (3) Connecticut and New York; (4) New Jersey; (4) Delaware, Maryland, and Virginia; and (5) North Carolina. Rather than liberalize measures up to the 2018 harvest limit, the Board specified that any adjustments to state measures in 2018

should result in no more than a 17-percent liberalization in coastwide harvest relative to the projected 2017 harvest of 3.23 million lb (1,465 mt), the harvest estimate available at the December 2017 meeting. The Board specified this maximum liberalization due to concerns about the status of the summer flounder stock, as well as concerns that harvest estimates for 2017 appeared to be anomalously low in terms of effort and landings, raising concerns that overages in 2018 may occur under larger liberalization if catch and effort rates increase in 2018.

NMFS proposes a suite of non-preferred coastwide measures, consistent with those adopted by the the Council and Board for implementation in 2018. 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 2018, 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 May 15-September 15. These measures are expected to constrain the overall recreational landings to the 2018 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 2018 precautionary default measures recommended by the Council and Board are identical to those in place for 2017: A 20.0-inch (50.8-cm) minimum fish size; a 2-fish per person possession limit; and an open season of July 1-August 31, 2018.

The Board reviewed and approved state and region proposals for modifying management at the Commission's February 8, 2018, meeting. With the exception of North Carolina, which intends to maintain status quo measures, all other regions have developed proposals for different 2018 recreational management that would achieve, but not exceed, a 17-percent liberalization of their 2017 harvest.

### **Scup Recreational Management Measures**

The 2018 scup recreational harvest limit is 7.37 million lb (3,342 mt) and 2017 recreational landings are currently estimated at 4.68 million lb (2,123 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 2018 recreational harvest limit is not exceeded. As a result, we are proposing to maintain the current scup recreational management measures for 2018.

### **Black Sea Bass Recreational Management Measures**

The 2018 black sea bass recreational harvest limit is 3.66 million lb (1,661 mt), a decrease of nearly 15 percent from the 2017 harvest limit of 4.29 million lb (1,945 mt). The stock biomass remains well above the biomass target and overfishing is not occurring but the overall biomass is expected to decline as the large 2011 year class moves out of the population due to natural and fishing mortality. The Council's Monitoring Committee and Commission's Technical Committee applied a smoothing technique to preliminary MRIP 2017 recreational landings through Wave 6 (November and December) to account for any anomalous estimates, which results in a 2017 harvest estimate of 3.55 million lb (1,610 mt). This estimated harvest is 17 percent below the 2017 harvest limit and 3 percent below the 2018 harvest limit.

The Council recommends extending the current black sea bass recreational season by removing a closure that occurs from September 22-October 21 and maintaining the current possession limit and minimum size. The following measures would apply to 2018: A 15-fish possession limit, a 12.5-inch (31.75-cm) minimum size, and a season from May 15-December 31.

At its February 2018 meeting, the Commission took final action on Addendum XXX, which establishes state recreational management measures designed to constrain catch to the 2018 recreational harvest limit and regionally allocates black sea bass using a combination of exploitable biomass information from the latest stock assessment and historical harvest. Ultimately, Massachusetts through New York will be allocated 61.35 percent of the harvest limit, New Jersey will receive 30.24 percent, and Delaware through North Carolina will receive 8.41 percent. To increase regional consistency in measures, each region will establish a standard set of measures, with each state in the region afforded the flexibility to adjust its minimum size by up to 1 inch (2.54 cm) and possession limit up to three fish.

If the states do not implement measures to constrain catch to the 2018 recreational harvest limit, the Council recommends a 14-inch (35.56-cm) minimum fish size and a five-fish possession limit with an open season of May 15-September 15. The Council and NMFS expect, based on February 2018 action by the Commission's Black Sea Bass Board, that these default measures will not be necessary. States presented regional proposals to the Technical Committee and Board in March 2018. These measures should constrain catch to the 2018 harvest limit.

### **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.

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that this proposed rule, if adopted,

would not have a significant economic impact on a substantial number of small entities. The Council conducted an evaluation of the potential socioeconomic impacts of the proposed measures in conjunction with an EA. According to the commercial ownership database, 359 for-hire affiliate firms generated revenues from recreational fishing for various species during the 2014-2016 period. All of those business affiliates are categorized as small businesses. It is not possible to derive what proportion of the overall revenues for these for-hire firms came from fishing activities for an individual species. Nevertheless, given the popularity of summer flounder and black sea bass as recreational species in the Mid-Atlantic and New England, revenues generated from these species are likely very important for many of these firms at certain times of the year. The 3 year average (2014-2016) combined gross receipts (all for-hire fishing activity combined) for these small entities was \$53,454,121, ranging from less than \$10,000 for 92 entities (lowest value \$238) to over \$1,000,000 for 11 entities (highest value \$2.8 million).

The economic impacts of the proposed measures in this action will be affected in part by the specific set of measures implemented at the state level for summer flounder conservation equivalency, and for black sea bass regional management. These impacts are likely to vary by species and by state, and in the case of black sea bass, some states will need to restrict measures or maintain status quo measures, while liberalizations in measures may be allowed for other states.

For summer flounder, this action would waive Federal measures in lieu of state measures designed to reach the 2018 harvest limit. Moderate liberalizations (17 percent relative to 2017 harvest) are expected to be implemented in most states for 2018. Thus, market demand may see a slight to moderate increase in 2018, although this is likely to vary by state depending on each

state's current measures and how they choose to modify them in 2018. Under more liberal management measures in 2018, some anglers may transfer effort to summer flounder from other species (*e.g.*, weakfish, striped bass, tautog, pelagics, etc.) resulting in very little change in overall fishing effort.

In general, for black sea bass, this action proposes to liberalize measures in Federal waters by removing a 30-day mid-season closure, so long as the states implement measures to constrain catch to the 2018 recreational harvest limit. The current possession limit and minimum size requirement would remain the same as in 2017. Removal of this mid-season closure reduces conflicts between Federal/state waters regulations and allows states more flexibility in setting their measures. Because the 2018 harvest limit has decreased by about 15 percent compared to 2017, liberalizations to state waters measures are not expected to be implemented, and in fact some states may need to slightly restrict or retain their existing measures compared to 2017 when evaluating the 2017 harvest and the lower 2018 harvest limit. Measures in state waters are expected to be adjusted to be slightly more conservative for New York and states to the north. The states of Delaware through North Carolina will likely adopt the proposed Federal water measures, which may result in a slight increase in market demand in those states. However, these states account for only 7 percent of all the directed black sea bass trips taken coastwide. The Board will consider approval of final black sea bass state recreational measures in March 2018. Should the states ultimately not adopt measures that would constrain catch to the 2018 recreational harvest limit, the Council is also proposing more restrictive Federal measures that would appropriately constrain catch to meet that objective, but this would result in similar impacts as if the states implemented these measures themselves. The overall combination of management measures may be slightly more restrictive in 2018 compared to 2017, but not to a

degree that is expected to substantially influence market demand for party/charter trips. Currently, the market demand for this sector is relatively stable. Because this rule will not have a significant economic impact on a substantial number of small entities, an initial regulatory flexibility analysis is not required and none has been prepared. There are no new reporting or recordkeeping requirements contained in any of the alternatives considered for this action.

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

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: April 6, 2018.

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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 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. Revise § 648.105 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 May 15 through September 15. This time period may be adjusted pursuant to the procedures in § 648.102.

3. In § 648.107 revise introductory text to paragraph (a) 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 2018 are the conservation equivalent of the season, minimum size, and possession limit prescribed in §§ 648.105, 648.104(b), and 648.106, respectively. This determination is based on a recommendation from the Summer Flounder Board of the Atlantic States Marine Fisheries Commission.

\* \* \* \* \*

4. Revise § 648.146 to read as follows:

**§ 648.146 Black sea bass recreational fishing season.**

Vessels that are not eligible for a moratorium permit under § 648.4(a)(7), and fishermen subject to the possession limit specified in § 648.145(a), may only possess black sea bass from May 15 through December 31, unless this time period is adjusted pursuant to the procedures in § 648.142.

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