



BILLING CODE 3510-22-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 190415375-9375-01]

RIN 0648-BI92

Fisheries of the Northeastern United States; Recreational Management Measures for the Summer Flounder Fishery; Fishing Year 2019

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 2019 summer flounder recreational fishery. The implementing regulations for this fishery require NMFS to publish recreational measures for the fishing year and to provide an opportunity for public comment. The intent of this action is to constrain recreational catch to the summer flounder recreational harvest limit and thereby, prevent overfishing on the summer flounder stock.

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-2019-0025, 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-2019-0025*,
- 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 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).

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 2019 summer flounder recreational fishery consistent with the recommendations of the Mid-Atlantic Fishery Management Council (Council) and the Atlantic States Marine Fisheries Commission (Commission). NMFS proposes to waive Federal summer flounder recreational measures in Federal waters of the exclusive economic zone (EEZ) and to all federally permitted summer flounder party/charter vessels, regardless of where they fish, so long as the states, through the Commission, collectively implement measures designed to constrain landings to the 2019 recreational harvest limit.

Background and Management Process

The summer flounder fishery is 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 unit specified in the FMP includes 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. States manage summer flounder within 3 nautical miles (4.83 km) of their coasts, under the Commission's plan for summer flounder. The summer flounder Federal regulations govern vessels and individual fishermen fishing in Federal waters of the EEZ, as well as vessels possessing a summer flounder charter/party vessel permit, regardless of where they fish.

Recreational Management Measures Process

The FMP established a monitoring committee for summer flounder 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 committee 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 limit 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 and the Commission's Summer Flounder, Scup, and Black Sea Bass Management Board then consider the monitoring committee's recommendations and any public comment in making their recommendations. The Council forwards its recommendations 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 target specified for summer flounder 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 11, 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 default 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 are 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.

The development of conservation equivalency measures 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 2019 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. NMFS will publish its final determination on 2019 conservational equivalency as a final rule in the **Federal Register** following review of the Commission's determination and any other public comment on this proposed rule.

2019 Summer Flounder Recreational Management Measures

At their joint meeting in March 2019, the Council and Board recommended revised summer flounder specifications for 2019. These revisions resulted from the 2018 summer flounder benchmark assessment, which was one of the first assessments in the region to incorporate revised Marine Recreational Information Program (MRIP) information. The summer flounder assessment concluded that the stock is not overfished and overfishing is not occurring relative to updated biological reference points. Although recruitment has been below average since 2011 for unknown reasons, the inclusion of new estimates of recreational catch from MRIP increased the biomass of the population compared to previous assessments.

Based on the results of the assessment, the recommended revised 2019 summer flounder recreational harvest limit is 7.69 million lb (3,488 mt), a 74-percent increase from the 2018 harvest limit of 4.42 million pounds (2,005 mt), and a 49-percent increase compared to what is currently in place for 2019 (5.15 million pounds; 2,336 mt). A separate rulemaking revising the 2019 specifications, including the recreational harvest limit, is being prepared and must be finalized before NMFS can publish a final rule for this action.

As previously mentioned, the Council and Board recommended conservation equivalency in Federal waters. Based on the Council's and the Board's recommendations, and as part of the

conservation equivalency process, NMFS also proposes a suite of non-preferred coastwide measures, consistent with those adopted by the Council and Board for implementation in 2019. 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 2019, 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 identical to the non-preferred 2018 coastwide measures. These measures are expected to constrain the overall recreational landings to the 2019 recreational harvest limit, should conservation equivalency be disapproved based on the Commission's recommendation letter. 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 2019 precautionary default measures recommended by the Council and Board are identical to those in place for 2018: 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.

Although the Council and Board's recommended 2019 recreational harvest limit is an increase compared to what was in place in 2018, preliminary harvest estimates using the updated MRIP methodology indicate that the 2018 recreational landings are 7.17 million pounds (3,252 mt). As a result, the Council and Board do not recommend liberalizing any recreational measures (*e.g.*, state waters measures, the non-preferred coastwide and precautionary default measures required through conservation equivalency) due to the increase in expected 2019 catch based on the revised MRIP information (*i.e.*, if measures remain in place, they are expected to constrain catch to the 2019 harvest limit).

Similar to 2016-2018, the 2019 management program adopted by the Commission

divides the coastline 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 (minimum size, bag limit, and fishing season length), and the combination of those measures must be sufficient to constrain landings to the recreational harvest limit.

Through the Commission process, states may submit proposals for conservationally equivalent measures that would maintain status quo harvest levels relative to the preliminary 2018 recreational harvest. Proposals for conservationally equivalent state measures were reviewed by the Board's Technical Committee in late March, and the Board considered final approval in early April 2019. Following the Board's consideration of final 2019 state measures, the Commission must submit a letter to NMFS stating whether the states have met the conservation objectives under Addendum XXXII to the Commission's Interstate FMP and that catch is expected to constrain catch to the 2019 recreational harvest limit. Once that letter is received and the revised 2019 specifications are approved, NMFS will be able to publish a final recreational management measures rule with a conservation equivalency determination for 2019.

Additionally, this proposed rule includes a revision to the regulations implementing the FMP to update text that is unnecessary, outdated, unclear, or otherwise could be improved. NMFS proposes these changes consistent with section 305(d) of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), which provides that the Secretary of Commerce may promulgate regulations necessary to ensure that amendments to a fishery management plan (FMP) are carried out in accordance with the FMP and the Magnuson-Stevens Act. The revision at § 648.14(p)(2)(ii)(B), which pertains to a prohibition against possessing, retaining, or landing black sea bass harvested from the EEZ in excess of the commercial

possession limit, would be removed from the regulations. There is no Federal waters commercial black sea bass possession limit and, as such, this regulatory text is confusing and unnecessary.

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. According to the commercial ownership database, 351 for-hire affiliate firms generated revenues from recreational fishing for various species during the 2015-2017 period. All of those business affiliates are categorized as small businesses. Estimating what proportion of the overall revenues for these for-hire firms came from fishing activities for an individual species is not possible. Nevertheless, given the popularity of summer flounder as a recreational species in the Mid-Atlantic and New England, generated revenues are likely very important for many of these firms at certain times of the year. The 3-year average (2015-2017) combined gross receipts (all for-hire fishing activity combined) for these small entities was \$52,460,560 ranging from less than \$10,000 for 79 entities (lowest value \$81) to over \$1,000,000 for 9

entities (highest value \$2.8 million).

This action would waive Federal measures in lieu of state measures designed to reach the 2019 harvest limit. 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. The impacts are likely to vary by state, but are expected to be equivalent to measures that were in place in 2018. The summer flounder recreational measures under conservation equivalency are expected to neither reduce nor increase recreational satisfaction or for-hire revenues when compared to 2018. Demand for for-hire trips is expected to remain approximately the same as in 2018. Thus, market demand is expected to be similar in 2019, although this is likely to vary by state depending on each state's current measures and how they choose to modify them in 2019.

Because the 2019 measures are expected to be mostly identical to 2018, this rule will not have a significant economic impact on a substantial number of small entities. Therefore, 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: May 13, 2019.

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.*

§ 648.14 [Amended]

2. In § 648.14, remove and reserve paragraph (p)(2)(ii)(B).

3. In § 648.107, the introductory text to paragraph (a) is 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 2019 are the conservation equivalent of the minimum size, season, 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.

* * * * *

[FR Doc. 2019-10249 Filed: 5/16/2019 8:45 am; Publication Date: 5/17/2019]