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**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

**50 CFR Part 648**

**[Docket No. 190415375-9498-02]**

**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:** Final rule.

**SUMMARY:** NMFS announces 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. The intent of this action is to achieve, but not exceed, the 2019 summer flounder recreational harvest limit and thereby prevent overfishing on the summer flounder stock.

**DATES:** This rule is effective [*insert date of publication in the FEDERAL REGISTER*].

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

**SUPPLEMENTARY INFORMATION:** 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 Mid-Atlantic Fishery Management Council (Council) and the Atlantic States Marine Fisheries Commission (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 Exclusive Economic Zone (EEZ), as well as vessels possessing a summer flounder charter/party vessel permit, regardless of where they fish.

In this final rule, NMFS is implementing conservation equivalency (i.e., waiving Federal measures in light of the existence of appropriate measures in state waters) to manage the 2019 summer flounder recreational fishery, as proposed on May 17, 2019 (84 FR 22426). These measures are consistent with the recommendations of the Council and the Commission. NMFS is waiving Federal summer flounder recreational measures in Federal waters and to all federally permitted summer flounder party/charter vessels, regardless of where they fish, because the states, through the Commission, are collectively implementing measures designed to constrain landings to the 2019 recreational harvest limit. 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 (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 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 (July 26, 2006; 71 FR 42315) allows states to form regions for conservation equivalency in order to minimize differences in regulations for

anglers fishing in adjacent waters.

Similar to the 2016-2018 program, 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 achieve, but not exceed, the recreational harvest limit.

By a letter dated May 20, 2019, the Commission certified that the combined measures implemented by individual states and regions are the conservation equivalent of coastwide measures that would be expected to result in the 2019 recreational harvest limit being achieved, but not exceeded.

Based on the Commission's recommendations, we find that the 2019 recreational fishing measures required to be implemented in state waters are, collectively, the conservation equivalent of the season, minimum 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 2019.

In addition, this action reaffirms the default coastwide measures (a 19-inch (48.3-cm) minimum size, 4-fish possession limit, and May 15 through September 15 open fishing season), that become effective January 1, 2020, upon the expiration of the 2019 conservation equivalency program. These are coastwide measures that were discussed in the proposed rule as measures

that would apply in the absence of conservation equivalency. These default measures would then remain effective until replaced by the 2020 recreational management measures in the spring of next year.

This final rule also removes a black sea bass prohibition to address text that is unnecessary, outdated and unclear. NMFS implements 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. This final rule removes 50 CFR 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, from the regulations. There is no Federal waters commercial black sea bass possession limit and, as such, this regulatory text is confusing and unnecessary.

### **Comments and Responses**

NMFS received three comments on the proposed rule. Only one of these comments was directly pertinent to the proposed Federal recreational measures. This commenter questioned why the increased recreational harvest limit did not result in more liberal non-preferred coastwide measures or state measures. Using the Fishing Effort Survey, the 2018 Marine Recreational Information Program estimated that catch is very close to the 2019 revised recreational harvest limit, indicating that the 2018 measures in place for last year are appropriate to achieve, but not exceed, catch to the 2019 harvest limit.

The remaining comments, which were related to state-specific measures outside the scope of this action, offered concerns over MRIP estimates, requested more focus on ecosystem-based

management for a number of species in the region, and relayed general complaints over the management of summer flounder. No changes to the final rule are made based on the submitted comments.

### **Classification**

The Administrator, Greater Atlantic Region, NMFS, determined that these management measures are necessary for the conservation and management of the summer flounder fishery and are consistent with the Magnuson-Stevens Act and other applicable laws.

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.

This rule is being issued at the earliest possible date. Preparation of the proposed rule was dependent on the submission of documentation developed by the Council in support of these recreational management measures. NMFS received a complete document in April 2019. Documentation in support of the Council's recommended management measures is required for NMFS to provide the public with information from the environmental and economic analyses, as required in rulemaking, and to evaluate the consistency of the Council's recommendation with the Magnuson-Stevens Act and other applicable law. NMFS must also wait for a letter from the Commission that certifies the states' measures as being appropriate to achieve but not exceed the recreational harvest limit. We received this letter on May 20, 2019. The proposed rule published on May 17, 2019 (84 FR 22426), with a 15-day comment period ending June 3, 2019.

The Federal coastwide regulatory measures for summer flounder that were codified last

year (83 FR 24945; May 31, 2018) remain in effect until the decision to waive Federal measures for 2019 is made effective by this final rule. Although the states' summer flounder fisheries are already open, additional 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 illegal landings. Additionally, the Federal measures currently in place are more restrictive than many of the measures in state waters, which will unnecessarily disadvantage federally permitted vessels who are subject to these more restrictive measures until this final rule is effective.

In response to this action, unlike actions that require an adjustment period to comply with new rules, charter/party operators will not have to purchase new equipment or otherwise expend time or money to comply with these management measures. Rather, complying with this final rule simply means adhering to the published management measures for summer flounder while the 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 publication 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.

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

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: June 28, 2019.

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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.*

**§ 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.

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