

species were harvested in state or Federal waters.

### Classification

The Regional Administrator for the NMFS Southeast Region has determined this temporary rule is necessary for the conservation and management of South Atlantic yellowtail snapper and is consistent with the Magnuson-Stevens Act and other applicable laws.

This action is taken under 50 CFR 622.193(n)(1)(i) and is exempt from review under Executive Order 12866.

These measures are exempt from the procedures of the Regulatory Flexibility Act because the temporary rule is issued without opportunity for prior notice and comment.

This action responds to the best scientific information available. The Assistant Administrator for NOAA Fisheries (AA) finds that the need to immediately implement this action to close the yellowtail snapper commercial sector constitutes good cause to waive the requirements to provide prior notice and opportunity for public comment pursuant to the authority set forth in 5 U.S.C. 553(b)(B), as such procedures are unnecessary and contrary to the public interest. Such procedures are unnecessary because the rule implementing the AM has been subject to notice and comment, and all that remains is to notify the public of the closure. Such procedures are contrary to the public interest because there is a need to immediately implement this action to protect the yellowtail snapper resource, as the capacity of the fishing fleet allows for rapid harvest of the commercial ACL. Prior notice and opportunity for public comment would require time and could result in a harvest well in excess of the established commercial ACL.

For the aforementioned reasons, the AA also finds good cause to waive the 30-day delay in the effectiveness of this action under 5 U.S.C. 553(d)(3).

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

Dated: May 25, 2018.

**Jennifer M. Wallace,**

*Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.*

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 648

[Docket No. 180220193-8488-02]

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:** Final rule.

**SUMMARY:** NMFS announces 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. 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:** This rule is effective May 31, 2018.

**ADDRESSES:** 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 Management Measures

In this rule, NMFS specifies 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 establishing measures that would apply in the Federal waters of the exclusive economic zone (EEZ). Additionally, 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).

#### 2018 Summer Flounder Recreational Management Measures

NMFS is implementing conservation equivalency to manage the 2018 summer flounder recreational fishery, as proposed on April 11, 2018 (83 FR 15535). These measures are consistent with the recommendation of the Council and Commission. 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 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 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) allowed states to form regions for conservation equivalency in order to minimize differences in regulations for anglers fishing in adjacent waters.

The Commission is maintaining the provisions of Addendum XXVIII to its fishery management plan (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; (5) Delaware, Maryland, and Virginia; and (6) North Carolina. The Commission's Summer Flounder Management Board specified 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. The cap on liberalization is to address concerns that

overages may occur if catch and effort rates increase in 2018. More information on Addendum XXVIII is available from the Commission ([www.asmf.org](http://www.asmf.org)).

The Commission certified, by a letter dated April 26, 2018, that the Addendum XXVIII measures implemented by individual states and regions, when combined, are the conservation equivalent of coastwide measures that would be expected to result in the 2018 recreational harvest limit being achieved, but not exceeded.

Based on the Commission's recommendation, we find that the 2018 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 rule to recognize state-implemented measures as conservation equivalent of the coastwide recreational management measures for 2018.

In addition, this action implements 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, 2019, when the 2018 conservation equivalency program expires. These measures will remain effective until replaced by the 2019 recreational management measures in the spring of next year.

#### **Scup Recreational Management Measures**

This rule maintains status quo scup measures for the 2018 fishery: A 9-inch (22.9-cm) minimum fish size, 50-fish per person possession limit, and year-round season.

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

NMFS is extending the Federal waters black sea bass recreational season by removing a closure that occurs from September 22 through October 21 and maintaining the current possession limit and minimum size. The following measures are implemented for the 2018 fishing year in Federal waters: A 15-fish possession limit, a 12.5-inch (31.75-cm) minimum size, and an open season from May 15–December 31.

On May 4, 2018, the Commission submitted a letter stating that the recreational black sea bass fishing measures to be implemented by the

states are projected to restrict the recreational coastwide landings to the 2018 recreational harvest limit of 3.66 million lb (1,661 mt). The Commission adjusted management measures contained in Addendum XXX following an appeal from the Northern Region (Massachusetts, Connecticut, Rhode Island, and New York). The revised management program is designed to meet the needs of the Northern Region without impacting the remaining states, while still constraining harvest to the recreational harvest limit.

Based on the Commission's letter, NMFS has determined that the measures that the states have committed to implement are sufficient to restrain catch appropriately. As a result, NMFS is able to implement the measures outlined in the proposed rule in Federal waters.

#### **Comments and Responses**

On April 11, 2018, NMFS published the proposed measures for the 2018 summer flounder, scup, and black sea bass recreational fisheries for public notice and comments. NMFS received 46 comments. Only one of these comments was directly pertinent to the proposed Federal recreational measures. The commenter offered alternative measures to consider, suggesting a 5-fish possession limit for summer flounder, a 40-fish possession limit for scup with a 9-inch minimum size, and an unspecified possession limit higher than the current 15-fish possession limit for black sea bass. This commenter did not provide a rationale for why these measures would be appropriate or why the measures developed by the Council must be disapproved by NMFS. The remaining comments spoke directly to the Northern Region's black sea bass appeal, which was resolved by the Commission to meet the needs of the Northern Region without impacting the remaining states, addressed state-specific measures outside the scope of this action, offered general concerns over Marine Recreational Information Program estimates, or relayed general complaints over the management of black sea bass. No changes to the final rule are made based on these comments.

#### **Classification**

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

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 the EA in support of these recreational management measures that is developed by the Council. A complete document was received by NMFS in April 2018. 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. The proposed rule published on April 11, 2018, with a 15-day comment period ending April 26, 2018.

The more restrictive Federal coastwide regulatory measures for summer flounder that were codified last year remain in effect until the 2018 recreational measures are made effective. 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. This would create inconsistencies between state and federal measures and increase the likelihood of illegal landings due to misunderstood regulations.

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 each relevant species of fish 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 and to make this rule effective upon publication in the **Federal Register**.

This final 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 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. Two comments were received that mentioned perceived economic impacts of state waters measures, which is outside the scope of this action and results from decisions made by the Commission. 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: May 24, 2018.

**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.*

- 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 paragraph (a) introductory text 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 §§ 648.104(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.

\* \* \* \* \*

- 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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