

**DEPARTMENT OF COMMERCE****National Oceanic and Atmospheric Administration****50 CFR Part 648**

[Docket No. 060317073-6125-02; I.D. 031406A]

RIN 0648-AT28

**Fisheries of the Northeastern United States; Recreational Management Measures for the Summer Flounder, Scup, and Black Sea Bass Fisheries; Fishing Year 2006**

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

**ACTION:** Final rule.

**SUMMARY:** NMFS issues this final rule to implement recreational management measures for the 2006 summer flounder, scup, and black sea bass fisheries. The intent of these measures is to prevent overfishing of the summer flounder, scup, and black sea bass resources.

**DATES:** Effective June 21, 2006, except for the amendment to § 648.107(a) introductory text, which is effective May 22, 2006.

**ADDRESSES:** Copies of supporting documents used by the Summer Flounder, Scup, and Black Sea Bass Monitoring Committees and of the Environmental Assessment, Regulatory Impact Review, and Initial Regulatory Flexibility Analysis (EA/RIR/IRFA) are available from Daniel Furlong, Executive Director, Mid-Atlantic Fishery Management Council, Room 2115, Federal Building, 300 South Street, Dover, DE 19901-6790. The EA/RIR/IRFA is also accessible via the Internet at <http://www.nero.noaa.gov>. The Final Regulatory Flexibility Analysis (FRFA) consists of the IRFA, public comments and responses contained in this final rule, and the

summary of impacts and alternatives contained in this final rule. Copies of the small entity compliance guide are available from Patricia A. Kurkul, Regional Administrator, Northeast Region, National Marine Fisheries Service, One Blackburn Drive, Gloucester, MA 01930-2298.

**FOR FURTHER INFORMATION CONTACT:** Sarah McLaughlin, Fishery Policy Analyst, (978) 281-9279.

**SUPPLEMENTARY INFORMATION:****Background**

The summer flounder, scup, and black sea bass fisheries are managed cooperatively by the Atlantic States Marine Fisheries Commission (Commission) and the Mid-Atlantic Fishery Management Council (Council), in consultation with the New England and South Atlantic Fishery Management Councils. The Summer Flounder, Scup, and Black Sea Bass Fishery Management Plan (FMP) and its implementing regulations, which are found at 50 CFR part 648, subparts A (general provisions), G (summer flounder), H (scup), and I (black sea bass), describe the process for specifying annual recreational management measures that apply in the Exclusive Economic Zone (EEZ). The states manage these fisheries within 3 miles of their coasts, under the Commission's plan for summer flounder, scup, and black sea bass. The Federal regulations govern vessels fishing in the EEZ, as well as vessels possessing a Federal fisheries permit, regardless of where they fish.

The 2006 coastwide recreational harvest limits are 9,293,695 lb (4,216 mt) for summer flounder, 4,153,168 lb (1,884 mt) for scup, and 3,988,732 lb (1,809 mt) for black sea bass. The 2006 quota specifications, inclusive of the recreational harvest limits, were determined to be consistent with the 2006 target fishing mortality rate (F) for summer flounder and the target exploitation rates for scup and black sea bass.

The proposed rule to implement annual Federal recreational measures for the 2006 summer flounder, scup, and black sea bass fisheries was published on March 27, 2006 (71 FR 15147), and contained management measures (minimum fish sizes, possession limits, and fishing seasons) intended to keep annual recreational landings from exceeding the specified harvest limits. A complete discussion of the development of the recreational management measures appeared in the preamble of the proposed rule and is not repeated here. All minimum fish sizes discussed below are total length measurements of the fish, i.e., the straight-line distance from the tip of the snout to the end of the tail while the fish is lying on its side. For black sea bass, total length measurement does not include the caudal fin tendril. All possession limits discussed below are per person.

Based on the recommendation of the Commission, the Regional Administrator finds that the recreational summer flounder fishing measures proposed to be implemented by the states of Massachusetts through North Carolina for 2006 are the conservation equivalent of the season, minimum size, and possession limit prescribed in §§ 648.102, 648.103, and 648.105(a), respectively. According to the regulation at § 648.107(a)(1), vessels subject to the recreational fishing measures of this part and landing summer flounder in a state with an approved conservation equivalency program shall not be subject to the more restrictive Federal measures, and shall instead be subject to the recreational fishing measures implemented by the state in which they land. Section 648.107(a) has been amended accordingly. The management measures will vary according to the state of landing, as specified in the following table.

TABLE 1 - 2006 STATE RECREATIONAL MANAGEMENT MEASURES FOR SUMMER FLOUNDER

State	Minimum Fish Size	Possession Limit	Fishing Season
MA	17.5 inches (44.5 cm)	7 fish	January 1 through December 31
RI	17.5 inches (44.5 cm)	7 fish	April 1 through December 31
CT	18 inches (45.7 cm)	6 fish	April 30 through December 31
NY	18 inches (45.7 cm)	4 fish	May 6 through September 12
NJ	16.5 inches (41.9 cm)	8 fish	May 6 through October 9
DE	17 inches (43.2 cm)	4 fish	January 1 through December 31
MD*	15.5 inches (39.4 cm)	4 fish	January 1 through December 31
VA	16.5 inches (41.9 cm)	6 fish	January 1 through December 31
NC	14 inches (35.6 cm)	8 fish	January 1 through December 31

\* Measures for the ocean waters off MD in the Atlantic Ocean and coastal bays; for the Chesapeake Bay, a 15-inch (38.1-cm) minimum fish size, a 2-fish possession limit, and a fishing season of January 1 through December 31 applies.

Table 2 contains the coastwide Federal measures for scup and black sea bass that are being implemented. These measures are unchanged from those published in the proposed rule.

TABLE 2 - 2005 SCUP AND BLACK SEA BASS RECREATIONAL MANAGEMENT MEASURES

Fishery	Minimum Fish Size		Possession Limit	Fishing Season
	inches	cm		
Scup	10	25.4	50 fish	January 1 through last day of February, and September 18 through November 30
Black Sea Bass	12	30.5	25 fish	January 1 through December 31

As in the past 4 years, the scup fishery in state waters will be managed under a regional conservation equivalency system developed through the Commission. Because the Federal FMP does not contain provisions for conservation equivalency, and states may adopt their own unique measures, the Federal and state recreational scup management measures will differ for 2006.

#### Comments and Responses

One comment letter was received regarding the proposed recreational management measures (71 FR 15147, March 27, 2006).

*Comment 1:* The commenter expressed concern about the impact of commercial fishing on the summer flounder, scup, and black sea bass total stocks and supports reduction of the total allowable landings for these species by 50 percent in 2006, and by an additional 10 percent each subsequent year.

*Response:* This final rule implements management measures (minimum fish sizes, possession limits, and fishing seasons) intended to keep annual recreational landings from exceeding the specified harvest limits. As described in the proposed rule, the FMP established Monitoring Committees (Committees) for the summer flounder, scup, and black sea bass fisheries, consisting of representatives from the Commission, the Mid-Atlantic, New England, and South Atlantic Councils, and NMFS. The FMP and its implementing regulations require the Committees to review scientific and other relevant information annually and to recommend management measures (i.e., minimum fish size, possession limit, and fishing season) necessary to achieve the recreational harvest limits established for each of the three fisheries for the upcoming fishing year. While NMFS acknowledges that consideration of total allowable landings and quota allocation are important, this rule is not the proper

mechanism to address these general issues.

#### Classification

There is good cause under 5 U.S.C. 553(d)(3) to waive the 30-day delay in effective date for the summer flounder recreational management measures contained in this rule (§ 648.107(a)). The linchpin of NMFS's decision whether to proceed with the coastwide measures or to give effect to the conservation equivalent measures is advice from the Commission as to the results of its review of the plans of the individual states. This advice has only recently been received via a letter dated May 3, 2006. The recreational summer flounder fishery has commenced in all states. The party and charter vessels from the various states are by far the largest component of the recreational fishery that fish in the EEZ. The Federal coastwide regulatory measures for the three species that were codified last year remain in effect. The Federal coastwide measures for the summer flounder fishery are more restrictive than the measures adopted by the states (with the exception of NY) and approved by the Commission as conservation equivalents, and implemented by NMFS in this rule. Federally permitted recreational vessels subject to these more restrictive measures are currently operating at a disadvantage, since non-federally permitted recreational vessels can fish in state waters under less restrictive measures.

This final rule has been determined to be not significant for purposes of Executive Order 12866.

Included in this final rule is the FRFA prepared pursuant to 5 U.S.C. 604(a). The FRFA incorporates the economic impacts described in the IRFA, a summary of the significant issues raised by the public comments in response to the IRFA, and NMFS's responses to those comments, and a summary of the analyses completed to support the action. A copy of the EA/RIR/IRFA is available from the Council (see ADDRESSES).

#### Final Regulatory Flexibility Analysis

##### *Statement of Objective and Need*

A description of the reasons why this action is being taken, and the objectives of and legal basis for this final rule are explained in the preambles to the proposed rule and this final rule and are not repeated here.

##### *Summary of Significant Issues Raised in Public Comments*

The one comment letter received on the proposed rule did not specifically address the potential economic impact of the rule. No changes to the proposed rule were required to be made as a result of the public comments. For a summary of the comments received, and the responses thereto, refer to the "Comments and Responses" section of this preamble.

##### *Description and Estimate of Number of Small Entities to Which This Rule Will Apply*

The Council estimated that the proposed measures could affect any of the 803 vessels possessing a Federal charter/party permit for summer flounder, scup, and/or black sea bass in 2004, the most recent year for which complete permit data are available. However, only 327 of these vessels reported active participation in the recreational summer flounder, scup, and/or black sea bass fisheries in 2004.

##### *Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements*

No additional reporting, recordkeeping, or other compliance requirements are included in this final rule.

##### *Description of the Steps Taken to Minimize Economic Impact on Small Entities*

Under the conservation equivalency approach, each state may implement unique management measures appropriate to that state to achieve state-specific harvest limits, as long as the combined effect of all of the states'

management measures achieves the same level of conservation as would Federal coastwide measures developed to achieve the annual recreational harvest limit. The conservation equivalency approach allows states flexibility in the specification of management measures, unlike the application of one set of coastwide measures. It is not possible to further mitigate economic impacts on small entities because the specification of the recreational management measures (minimum fish size, possession limits, and fishing seasons) contained in this final rule is constrained by the conservation objectives of the FMP.

The economic analysis conducted in support of this action assessed the impacts of the various management alternatives. In the EA, the no action alternative for each species is defined as the continuation of the management measures as codified for the 2005 fishing season. For summer flounder, although the status quo measures would be expected to constrain landings to the 2006 target, state-specific implications of the no-action (coastwide) alternative would be varied, with the coastwide measures being more restrictive than the conservation equivalent measures for some states and less restrictive for others. Conservation equivalency allows each state to tailor specific recreational fishing measures to the needs of that state, while still achieving conservation goals. The implications of the no-action alternative are not substantial for scup and black sea bass. Landings of these species in 2005 were less than their respective targets, and the status quo measures are expected to constrain landings to the 2006 targets. The no-action measures were analyzed in Summer Flounder Alternative 2, Scup Alternative 1, and Black Sea Bass Alternative 1.

At this time, it is not possible to determine the economic impact of summer flounder conservation equivalency on each state. However, it is likely to be proportional to the level of landings reductions required. If the conservation equivalency alternative is effective at achieving the recreational harvest limit, then it is likely to be the only alternative that minimizes economic impacts, to the extent practicable, yet achieves the biological objectives of the FMP. Under § 648.107, vessels landing summer flounder in any state that does not implement conservation equivalent measures are subject to the precautionary default measures, consisting of an 18-inch (45.7-cm) minimum fish size, a possession limit of one fish, and no closed season. The suites of

conservation equivalent measures proposed by each state are less restrictive than the precautionary default measures. Therefore, because states have a choice as to the specific measures to apply to landings in each state, it is more rational for the states to adopt conservation equivalent measures that result in fewer adverse economic impacts than to adopt the more restrictive measures contained in the precautionary default alternative.

For the proposed rule, average party/charter losses for each of the 18 potential combinations of alternatives were estimated for federally permitted vessels by multiplying the number of potentially affected trips in 2006 in each state by the estimated average access fee paid by party/charter anglers in the Northeast Region in 2005. Predicted average losses for NY were presented as an example, and ranged from \$1,582 per vessel under the combined effects of Summer Flounder Alternative 2, Scup Alternative 3, and Black Sea Bass Alternative 2, to \$6,924 per vessel under the combined effects of the summer flounder precautionary default (considered in Summer Flounder Alternative 1), Scup Alternative 2, and Black Sea Bass Alternative 3 (assuming a 25-percent reduction in effort for affected trips).

#### *Small Entity Compliance Guide*

Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996 states that, for each rule or group of related rules for which an agency is required to prepare a FRFA, the agency shall publish one or more guides to assist small entities in complying with the rule, and shall designate such publications as "small entity compliance guides." The agency shall explain the actions a small entity is required to take to comply with a rule or group of rules. As part of this rulemaking process, a letter to permit holders that also serves as the small entity compliance guide (the guide) was prepared and will be sent to all holders of Federal party/charter permits issued for the summer flounder, scup, and black sea bass fisheries. In addition, copies of this final rule and the guide are available from NMFS (see ADDRESSES) and at the following Web site: <http://www.nero.noaa.gov>.

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

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: May 17, 2006.

**William T. Hogarth**,  
Assistant Administrator for Fisheries,  
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. In § 648.107, paragraph (a) introductory text 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 Massachusetts through North Carolina for 2006 are the conservation equivalent of the season, minimum fish size, and possession limit prescribed in §§ 648.102, 648.103, and 648.105(a), respectively. This determination is based on a recommendation from the Summer Flounder Board of the Atlantic States Marine Fisheries Commission.

\* \* \* \* \*

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#### **DEPARTMENT OF COMMERCE**

#### **National Oceanic and Atmospheric Administration**

#### **50 CFR Part 648**

[Docket No., I.D. 050906B]

#### **Magnuson-Stevens Fishery Conservation and Management Act Provisions; Fisheries of the Northeastern United States; Northeast (NE) Multispecies Fishery; Allocation of Trips to Closed Area (CA) II Yellowtail Flounder Special Access Program (SAP)**

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

**ACTION:** Temporary rule; notification of maximum number of trips.

**SUMMARY:** NMFS announces that the Administrator, Northeast Region, NMFS (Regional Administrator) is allocating, using the formula implemented by Framework Adjustment (FW) 40B, zero trips into the CA II Yellowtail Flounder SAP for the 2006 NE multispecies fishing year (FY). The intent of this