

Under 50 CFR 622.44(c)(2), NMFS is required to reduce the trip limit in the commercial fishery for golden tilefish from 4,000 lb (1,814 kg) to 300 lb (136 kg) per trip when 75 percent of the fishing year quota is met, by filing a notification to that effect in the **Federal Register**. Based on current statistics, NMFS has determined that 75 percent of the available commercial quota of 295,000 lb (133,810 kg), gutted weight, for golden tilefish will be reached on or before May 20, 2008. Accordingly, NMFS is reducing the commercial golden tilefish trip limit to 300 lb (136 kg) in the South Atlantic EEZ from 12:01 a.m., local time, on May 20, 2008, until the quota is reached and the fishery closes or 12:01 a.m., local time, on January 1, 2009, whichever occurs first.

### Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA, (AA), finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such prior notice and opportunity for public comment is unnecessary and contrary to the public interest. Such procedures would be unnecessary because the rule itself has already been subject to notice and comment, and all that remains is to notify the public of the trip limit reduction. Allowing prior notice and opportunity for public comment is contrary to the public interest because of the need to immediately implement this action to protect the fishery because the capacity of the fishing fleet allows for rapid harvest of the quota. Prior notice and opportunity for public comment would require time and would potentially result in a harvest well in excess of the established quota.

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).

This action is taken under 50 CFR 622.43(a) and is exempt from review under Executive Order 12866.

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

Dated: May 19, 2008.

**Emily H. Menashes,**

*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. 070717341-8549-02]

RIN 0648-AV41

### Fisheries of the Northeastern United States; Recreational Management Measures for the Summer Flounder, Scup, and Black Sea Bass Fisheries; Fishing Year 2008

**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 2008 summer flounder and scup fisheries and to notify the public that the recreational management measures for the black sea bass fisheries remain the same as in 2007. The actions of this final rule are necessary to comply with regulations implementing the Summer Flounder, Scup, and Black Sea Bass Fishery Management Plan (FMP) as well as to ensure compliance with the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). The intent of these measures is to prevent overfishing of the summer flounder, scup, and black sea bass resources.

**DATES:** Effective June 23, 2008, except for the amendment to § 648.107(a) introductory text, which is effective May 23, 2008.

**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 and supplemental economic analysis document are available from Patricia A. Kurkul, Regional Administrator, Northeast Region, NMFS, One

Blackburn Drive, Gloucester, MA 01930-2298.

**FOR FURTHER INFORMATION CONTACT:** Michael Ruccio, Fishery Policy Analyst, (978) 281-9104.

#### 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 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 nautical 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 2008 coastwide recreational harvest limits, after deduction of research set-aside (RSA), are 6,215,800 lb (2,819 mt) for summer flounder, 1,830,920 lb (830 mt) for scup, and 2,108,447 lb (956 mt) for black sea bass. The 2008 quota specifications, inclusive of the recreational harvest limits, were previously determined to be consistent with the 2008 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 2008 summer flounder, scup, and black sea bass fisheries was published on March 21, 2008 (73 FR 15111), and contained management measures (minimum fish sizes, possession limits, and fishing seasons) intended to keep annual recreational landings from exceeding the specified harvest limits.

#### 2008 Recreational Management Measures

Additional discussion on 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.

*Summer Flounder Management Measures*

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 2008 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 - 2008 STATE RECREATIONAL MANAGEMENT MEASURES FOR SUMMER FLOUNDER.

State	Minimum Fish Size		Possession Limit (number of fish)	Fishing Season
	inches	cm		
MA	17.5	44.45	5	June 10 through August 15
RI	20.0	50.80	7	January 1 through December 31
CT	19.5	49.53	5	May 24 through September 1
NY	20.5	52.07	4	May 15 through September 1
NJ	18.0	45.72	8	May 24 through September 7
DE	19.5	49.45	4	January 1 through December 31
MD <sup>1</sup>	17.5	44.45	3	January 1 through December 31
VA	19.0	48.26	5	January 1 through July 20, and July 31 through December 31
NC <sup>2</sup>	15.5	39.37	8	January 1 through December 31

<sup>1</sup> Chesapeake Bay, MD- a 16.5-in (41.91-cm) minimum fish size, a 1-fish possession limit, and a fishing season of January 1 through December 31 applies.

<sup>2</sup> Pamlico Sound, NC No person may possess flounder less than 14 in (35.56 cm) total length taken from internal waters for recreational purposes west of a line beginning at a point on Point of Marsh in Carteret County at 35° 04.6166'N lat. 76° 27.8000'W long., then running northeasterly to a point at Bluff Point in Hyde County at 35° 19.7000'N lat. 76° 09.8500'W long. In Core and Clubfoot creeks, the Highway 101 Bridge constitutes the boundary north of which flounder must be at least 14 in total length.

Albemarle Sound, NC No person may possess flounder less than 14 in (35.56 cm) total length taken from internal waters for recreational purposes west of a line beginning at a point 35° 57.3950'N lat. 76° 00.8166'W long. on Long Shoal Point; running easterly to a point 35° 56.7316'N lat. 75° 59.3000' W long. near Marker "5" in Alligator River; running northeasterly along the Intracoastal Waterway to a point 36° 09.3033'N lat. 75° 53.4916'W long. near Marker "171" at the mouth of North River; running northwesterly to a point 36° 09.9093'N lat. 75° 54.6601'W long. on Camden Point.

Browns Inlet South, NC No person may possess flounder less than 14 in (35.56 cm) total length in internal and Atlantic Ocean fishing waters for recreational purposes west and south of a line beginning at a point 34° 37.0000'N lat. 77° 15.0000'W long.; running southeasterly to a point 34° 32.0000'N lat. 77° 10.0000'W long.

*Scup Management Measures*

This rule implements the scup measures contained in the March 21,

2008, proposed rule. Table 2 contains the coastwide Federal measures for scup for 2008.

TABLE 2- 2008 SCUP RECREATIONAL MANAGEMENT MEASURES

Fishery	Minimum Fish Size		Possession Limit	Fishing Season
	inches	cm		
Scup	10.5	26.67	15 fish	January 1 through February 28, and October 1 through October 31

As has occurred in the past 6 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 2008.

*Black Sea Bass Management Measures*

Table 3 contains the coastwide Federal measures black sea bass in effect for 2007 and codified. The 2008 measures are unchanged from those at

50 CFR part 648 subpart I, and are presented in Table 3.

TABLE 3- 2008 BLACK SEA BASS RECREATIONAL MANAGEMENT MEASURES

Fishery	Minimum Fish Size		Possession Limit	Fishing Season
	inches	cm		
Black Sea Bass	12	30.5	25 fish	January 1 through December 31

### Comments and Responses

Eleven comments were received regarding the proposed recreational management measures (73 FR 15111, March 21, 2008). One individual submitted several comments regarding several species such as mackerel, red hake, and marlin which are not addressed by this rulemaking. In addition, several minor comments, whose relevance to the recreational management measures could not be ascertained, were submitted. A number of issues raised by commenters pertained to past actions already promulgated by NMFS, such as the establishment of the 2008 summer flounder Total Allowable Landings (TAL) and scup rebuilding plan. These are not responded to in this section. When possible, the concepts relayed in the comments have been consolidated and responded to in turn.

*Comment 1:* Some of the comments received allege that state-by-state conservation equivalency violates National Standard 2 of the Magnuson-Stevens Act, which requires that conservation and management actions to be based upon the best available scientific information. The argument presented by the commenters is that the Marine Recreational Fishery Statistical Survey (MRFSS) used to develop state-by-state conservation equivalency measures has inadequate resolution for state-level monitoring and management. These commenters cite the 2006 NOAA-commissioned National Academy of Sciences independent review of MRFSS that stated monitoring fisheries at a state level is a finer stratification than intended originally for the data collected and that the existing sampling strata may be too coarse a resolution to generate estimates that are adequate for management requirements. Further, these commenters cite a quotation from the National Academy of Science review committee chair wherein it was stated that MRFSS is better suited to monitor and manage on larger spatial scales rather than on smaller spatial scales.

*Response:* NMFS disagrees that managing the summer flounder recreational fishery using state-by-state conservation equivalency is a violation

of National Standard 2. NMFS has been aware of limitations in the MRFSS design and data for some time. It is, in fact, why the National Academy of Science peer-review was commissioned by NOAA. While the review did, as expected, point out numerous areas for improvement of the MRFSS sampling design, nowhere did the National Academy of Science reviewers indicate that use of the MRFSS data at smaller spatial scales (i.e., state-by-state) was an inappropriate use of the data. Moreover, the National Academy of Science review indicated that the level of precision available from MRFSS may require the modification of management objectives or management tools. This reason, along with poor performance of conservation equivalency in recent years, led NMFS to send letters early in the 2008 recreational management measures development process strongly encouraging both the Commission and the Council to improve their analysis of how potential recreational management measures are evaluated. In addition, NMFS encouraged states to take a more precautionary approach to both improve conservation equivalency's performance and to offset uncertainty in the assessment of potential measures effectiveness. In response, the Commission's Technical Committee evaluated a number of additional factors that may influence the effectiveness of state-by-state conservation equivalency before recommending the performance-based adjustment factor intended to improve conservation equivalency in 2008. NMFS contends that the information provided by MRFSS, along with additional information provided by individual states and fishery independent surveys, is sufficient and appropriate to manage the recreational summer flounder fishery on a state-by-state basis.

NMFS is continuing to move forward with implementing the recommendations of the National Academy of Science regarding MRFSS as well as developing and implementing a national saltwater angler registry, as required by the Magnuson-Stevens Reauthorization Act of 2006. NMFS does not disagree that the use of current

MRFSS methodology and data has moved well beyond their originally intended purpose. The changes under development, when fully implemented, are expected to incorporate many of the National Academy of Science's recommendations and substantially improve the precision and utility of the recreational fishery information available for fisheries management. In the interim, while new measures are developed and implemented, the MRFSS supplied data remain the only available information for recreational fisheries management at any spatial scale.

The use of MRFSS data was challenged, along with other aspects of the agency's actions, in 2006 in the case *United Boatmen, et al., v. Gutierrez*<sup>1</sup>, the Secretary of Commerce (Secretary), wherein the defendants alleged that MRFSS was a gravely flawed tool and unsuitable for use in setting the summer flounder TAL. On behalf of NMFS, the United States attorneys stated in the defendants' memorandum of law in opposition to the motion for summary judgment that, "MRFSS, while admittedly having limitations, has been upheld under National Standard 2 as the best available scientific information." The defendants' brief cited three separate cases wherein MRFSS had been upheld as the best available scientific information relative to National Standard 2. In this case, the judge found in favor of the Secretary, adding further support to the adequacy of MRFSS data for use in fisheries management as the best available science.

*Comment 2:* One commenter alleges that state-by-state conservation equivalency violates National Standard 3 of the Magnuson-Stevens Act, which requires individual fish stocks to be managed as a unit throughout its range, to the extent practicable.

*Response:* NMFS disagrees with the commenter. The summer flounder stock is managed as a single unit, consistent with National Standard 3. Management is cooperative among the Commission, which represents individual states in

<sup>1</sup>*United Boatmen, et al., v. Gutierrez Civil NO. 06-CV-400 (JBW)*

the management unit, the Council, and NMFS. The stock assessment conducted in support of annual TAL setting is for the entire Northeast Region management unit for summer flounder, from Maine to North Carolina. Catch limits for the recreational and commercial fisheries are established for the entire coast. The overarching commercial TAL is managed on a state-by-state basis, parsed by historic landings percentage by each state: Conversely, the recreational fishery may employ coastwide measures, or regional or state-by-state conservation equivalency to achieve the coastwide recreational harvest level. When state-by-state conservation equivalency is utilized for management, the individual state management measures are structured to achieve equivalency with the overarching coastwide (i.e., single management unit) recreational harvest limit. Furthermore, NMFS guidance on National Standard 3 (50 CFR 600.320) clearly states that management measures need not be identical for each geographic area within the management unit.

*Comment 3:* Some of the comments received allege that state-by-state conservation equivalency violates National Standard 4 of the Magnuson-Stevens Act which, states that conservation and management actions implemented by NMFS shall not discriminate between residents of different states. These commenters raised concerns about disparities that arise between adjacent states' management measures under the state-by-state conservation equivalency management system, specifically citing the differences between 2008 New York and New Jersey measures. Many of these commenters assert that such differences are highly inequitable and unfair. Some of these commenters point out that under the 2008 conservation equivalency system, New York will be required to implement measures with the greatest required reduction and, as a result, New York will have more restrictive fishing measures than any other state. Many of these commenters also stated that the state harvest allocations assigned by the Commission are inequitable and violate both National Standard 4 and National Standard 2 because they are based on a single year of landings data.

*Response:* NMFS disagrees with these comments that state-by-state conservation equivalency violates National Standards 2 and 4 of the Magnuson-Stevens Act. The conservation equivalency system was implemented in 2001 by Framework Adjustment 2 to the Federal FMP (66 FR

36208, July 11, 2001) and the Commission's companion action Addendum III to the Commission's Summer Flounder, Scup, and Black Sea Bass Fishery Management Plan. Under this process, states are allowed to design management measures to achieve their specified recreational management targets which, in turn, ensures that the coastwide recreational harvest limit will be achieved. NMFS has implemented conservation equivalency, as recommended by the Council and Commission, in each year since 2001.

The overarching process of conservation equivalency establishes a set of guidance for states to tailor management measures that meet the conservation objectives of the FMP rather than being subject to a one-size-fits-all coastwide approach. The conservation equivalency framework is uniform and applied consistently for all states, without differentiating among U.S. citizens, nationals, resident aliens, or corporations on the basis of their state of residence. Individual states must provide a combination of minimum fish size, possession limit, and fishing season to ensure that, when paired with the remaining Atlantic coastal states, the coastwide recreational harvest limit will not be exceeded. Each state's circumstance with respect to landings and overage is unique to that state and argues against the application of the same measures for each state. The Commission's Technical Committee evaluates the proposed state measures and, if sufficient, a recommendation to adopt, as functionally equivalent, the reviewed and approved measures is forwarded by the Commission to NMFS for implementation. This ensures that the conservation objectives of the FMP and the summer flounder rebuilding program are met.

To achieve conservation equivalency, the Commission, not NMFS, establishes a base recreational allocation that each state receives from the coastwide recreational harvest limit and specifies the percent reduction or liberalization in landings each state's measures must meet for each year. The conservation equivalency system does not result in a direct distribution of fishing privileges to individual states by NMFS. This allocation is not earmarked solely for the residents of an individual state; rather, any landing made in the state in question is counted against that state's recreational allocation. Fishery participants are free to participate in multiple states, land in adjacent states, etc., and are not discriminated against based on their state of residence.

The basis for the state recreational harvest allocations is the percentage of

1998 coastwide recreational landings by state. However, the Commission is at liberty to revise or amend these allocation percentages independently of the Council and/or NMFS as specific state recreational fishery percent allocations are not specified in the Federal regulations that implement the conservation equivalency program. The use of 1998 by the Commission was not arbitrary; the intent of 1998 as the base allocation year was to perpetuate the existing fishing practices in place prior to the onset of regulations which substantially modified the recreational fishery.

The percent reduction, or liberalization in landings, required by the Commission is relative to the previous year's landings level to ensure that the state-supplied measures will result in the same harvest level as would coastwide measures. A state may be required to reduce landings if the coastwide recreational harvest limit is reduced from year to year, if the state in question has exceeded the previous year's recreational landing limit, or if both have occurred. For 2008, in response to NMFS indicating that conservation equivalency measures needed to be more robust, the Commission included an additional percent reduction for some states called a performance-based adjustment. This adjustment is a further reduction imposed by the Commission to ensure that conservation equivalency will function as designed, and is the average overage for individual states from the period of 2001–2007.

New York has exceeded its Commission specified allocation of the recreational harvest limit in 5 of the 7 years where conservation equivalency has been utilized, including a 55-percent overage in 2007. The state's overages have ranged from 20 to 112 percent. Therefore, the percent reduction required by the Commission for New York under conservation equivalency for 2008 is greater than adjacent states. Had New York's measures achieved the required targets in previous years, New York would not be required to produce as large a reduction under the Commission's plan in 2008 to ensure that conservation equivalency could be achieved on a coastwide basis.

For these reasons, NMFS finds that implementing conservation equivalency, as recommended by the Council and Commission for 2008, does not violate National Standard 4 or National Standard 2 of the Magnuson-Stevens Act.

*Comment 4:* Some commenters allege that state-by-state conservation

equivalency violates National Standard 6 of the Magnuson-Stevens Act, which states that conservation and management measures shall take into account and allow for variations among, and contingencies in, fisheries, fishery resources, and catches. The basis for the commenters' assertion is that conservation equivalency does not address a northward shift in summer flounder stock distribution.

*Response:* NMFS disagrees with the commenters. Furthermore, NMFS asserts that the commenters have misinterpreted the intent of National Standard 6. The intent of National Standard 6 is to ensure that an FMP management regime includes some protection against uncertainties that may arise. National Standard 6 directs FMPs to have a suitable buffer, in favor of conservation, to deal with uncertainty, which may also be stated as a precautionary approach. Examples provided in NMFS guidance on National Standard 6 (50 CFR 600.336) include reductions in Optimum Yield, establishment of reserves, and adjustable management techniques to compensate for changes that occur during a fishing year as suitable buffers to mitigate uncertainty.

In regards to conservation equivalency, a summer flounder stock assessment is conducted annually and fully accounts for, among other things, stock distribution, changes in stock size, and fishery removals. The stock assessment does fully account for changes in stock dynamics and distribution in providing the basis for setting the annual coastwide TAL, which is then divided among the recreational and commercial fisheries.

The resultant commercial quota and recreational harvest limit generated from the annual stock assessment do account for uncertainty in the assessment by implementing a lower overall TAL than required by the FMP. For 2008, analysis conducted by the Northeast Fisheries Science Center (NEFSC) indicates that the 15.77-million-lb (7,153-mt) TAL has a 99-percent probability of not exceeding the overfishing level (FMAX=0.28). The FMP requires that the annual TAL have, at minimum, a 50-percent probability of constraining fishing mortality at or below the overfishing level.

Further, both the states and NMFS are able to monitor recreational harvests during the fishing season, and both can take corrective or closure actions to ensure that mortality objectives or harvest targets are not exceeded. For these reasons, NMFS finds that the use of state-by-state conservation equivalency complies with National

Standard 6 of the Magnuson-Stevens Act.

*Comment 5:* One commenter stated that NMFS did not conduct the required review of scientific and other relevant information before establishing the 2008 recreational management measures.

*Response:* NMFS disagrees with the commenter as extensive analysis of scientific and other relevant information has occurred as part of the 2008 recreational management measures specification process. A full analysis of the fishery dependent and independent data was conducted, as has occurred annually for each year since the inception of the FMP. The Council's Monitoring Committee and Commission's Technical Committee met jointly in November 2007 to review the most up to date stock and fishery related information available for establishing the 2008 recreational management measures. This review is required under the summer flounder regulations at § 648.100(a). These groups relayed their findings in December 2007 to the Council and Commission who, in turn, forwarded recommendations to NMFS based on the information provided by the two committees. Following the joint Council and Commission meeting, Council staff prepared and provided to NMFS an EA/RIR/IRFA outlining, in detail, the options considered by the Council including the environmental, regulatory, and economic impacts of each. NMFS certified that the EA/RIR/IRFA, and this subsequent final rule to implement the 2008 recreational management measures, is fully compliant with the FMP, its implementing regulations, the Magnuson-Stevenson Act, and other applicable guidance and laws.

*Comment 6:* One commenter stated that the only equitable way to manage the 2008 recreational summer flounder fishery would be to have a coastwide minimum fish size and possession limit, and allow states to set individual season lengths.

*Response:* This approach was not contemplated by the Council, Commission, or individual states for 2008. The summer flounder regulations found at § 648.100 are not currently structured to require or easily accommodate the commenter's proposed management system. Under coastwide management measures, minimum fish size, possession limit, and fishing season must be uniform for the entire coast. Under conservation equivalency, states may form voluntary regions; however, the states within those regions must have an identical minimum fish size, possession limit, and fishing season. If state by state-by-

state conservation equivalency is utilized, states are permitted to adopt unique measures provided the suite of measures are equivalent to the level established by the coastwide measures. It is conceivable that under state-by-state conservation equivalency, each state could voluntarily agree to hold minimum fish size and possession limits the same across states, while implementing independent state fishing seasons.

NMFS is implementing, through this final rule, state-by-state conservation equivalency as recommended by both the Council and Commission for the reasons previously outlined in the preamble to this rule. Under conservation equivalency, each state has implemented a unique minimum fish size, possession limit, and fishing season tailored to ensure that these measures result in recreational landings equivalent to the coastwide recreational harvest level.

*Comment 7:* One commenter stated that no economic analysis had been conducted for the 2008 recreational management measures.

*Response:* NMFS disagrees. A full economic impact analysis on regulated small businesses (i.e., federally permitted party/charter vessels) relative to the 2008 recreational management measures can be found in the EA/RIR/IRFA prepared by Council staff, the EA supplement prepared by NMFS staff, the proposed rule (73 FR 15111, March 21, 2008) IRFA summary, and in the FRFA contained in this final rule. As such, the economic analysis is not repeated here.

NMFS acknowledges that there are economic impacts associated with reductions in the TAL, and subsequent reductions in the recreational harvest limit from 2007 to 2008, and that continual reductions have a cumulative effect on fishery participants and associated businesses. A discussion of the steps taken to minimize, to the extent practicable, the economic impacts on small entities is outlined in the FRFA contained in the Classification section of this final rule.

Although this final rule does not directly regulate fishing support industries, NMFS acknowledges that potential reductions in fishing effort and associated expenditures may have indirect impacts on hotels, restaurants, fishing gear and bait shops, marinas, and other associated businesses. Rising fuel costs paired with the fishery reductions may exacerbate those impacts. The RFA imposes an obligation on NMFS only to analyze the economic impacts on businesses that it regulates directly. Associated and support businesses to the fishing industry

mentioned above are not directly regulated by NMFS. Thus, they were not included in the regulatory flexibility analysis.

*Comment 8:* Several commenters raised the issue that NMFS had spoken in support of coastwide management measures in both written correspondence and on the record at public meetings during the 2008 summer flounder recreational management measures development. These commenters indicated that NMFS is now ignoring its own advice, and should exercise its authority to replace the Council and Commission's recommendation for state-by-state conservation equivalency with coastwide management measures.

*Response:* NMFS acknowledges that previous statements were made by agency personnel in support of coastwide management measures during the early stages of development of recreational management measures for the 2008 recreational summer flounder fishery. In addition to these statements, NMFS personnel also urged the Council and Commission to consider factors that affect the effectiveness of both coastwide and conservation equivalency approaches to recreational management to substantially improve the likelihood of achieving the 2008 mortality objectives (i.e., not exceeding the recreational harvest limit). NMFS asked that the Council and Commission, through their Monitoring and Technical Committees, evaluate factors that influence the effectiveness of recreational management measures, including state performance relative to their respective conservation equivalency targets in previous years, changes in fish weight, angler participation, stock size, noncompliance rates, and standard error around MRFSS generated harvest estimates used in the evaluation of potential management measures. The Commission's Technical Committee reviewed these topics and found the use of the predicted 2008 average weight and the performance of individual states as compelling factors for application in 2008. The Technical Committee recommended using the predicted average weight for 2008 and a performance-based adjustment factor, that is derived by taking the average of yearly harvest-to-target performance by state from 2001–2007, and applying the resultant number as an additional reduction to 2008 states targets that have a net overage for the time frame.

NMFS is not constrained or committed to a particular course of action for any rulemaking until a final rule is published in the **Federal Register**. Introduction of new or

previously not considered information, or response to issues raised by the public during open comment periods, are examples of instances wherein NMFS may deviate from the course of action initially discussed or even published in a proposed rule. NMFS finds the Commission's required performance-based approach to be a meaningful demonstration by the Commission's member states to ensure that conservation equivalency performs as originally contemplated for 2008. As such, it is a more precautionary approach than applied in previous years, and presents a higher likelihood that the 2008 recreational harvest limit will not be exceeded on either a state-by-state basis or coastwide, and that the subsequent mortality objectives will be met for the 2008 fishing year.

For NMFS to disapprove the Council's recommendation and substitute alternative measures, in this case, coastwide management measures, NMFS must reasonably demonstrate that the recommended measures are either inconsistent with applicable law or otherwise demonstrate that the conservation objectives of the FMP will not be achieved by implementing the recommendation in question. NMFS does not find the Council and Commission's recommendation are legally suspect or incapable of achieving the FMP's conservation objectives in light of the additional performance based factor mandated by the Commission for use in 2008.

However, NMFS remains concerned that there is little margin for error in the remaining 4 years of the summer flounder rebuilding plan (2009–2012). Therefore, as NMFS also frequently indicated during recreational management measures development, recreational landings will be monitored in season and, if necessary to ensure the mortality objectives are not compromised for 2008, an inseason closure of the EEZ may occur. Any such closure action would be announced through multiple media outlets, including publication of a notice in the **Federal Register**.

*Comment 9:* One commenter stated that the summer flounder stock is sufficiently rebuilt and that the current rebuilding target should be re-evaluated.

*Response:* The updated 2006 stock assessment information used in establishing the 2008 summer flounder TAL indicates that the Spawning Stock Biomass (SSB) in 2006, the most recent year for which complete information is available, was 93.3 million lb (42,316 mt). This is below the most recently peer-reviewed<sup>2</sup> biomass rebuilding target of 197.1 million lb (89,411 mt),

and slightly below one-half the biomass rebuilding target level of 98.6 million lb (44,706 mt). As such, the stock continues to be defined as overfished, and has not yet been rebuilt as required by the Magnuson-Stevens Act. The summer flounder stock must achieve the biomass rebuilding target (i.e., be rebuilt) by no later than January 1, 2013.

A comprehensive benchmark stock assessment involving scientist from the Northeast Fisheries Science Center, Mid-Atlantic state fishery agencies, academia, and industry is currently occurring. The benchmark assessment will re-evaluate the status of the summer flounder stock and the biological reference points, including the rebuilding target. Results of the benchmark assessment, including updated stock status and any modifications to the biological reference points and rebuilding target, are expected to be available to the Council during their August 2008 meeting, wherein initial discussions for the 2009 summer flounder TAL will occur.

*Comment 10:* Some commenters specifically requested that NMFS exercise its authority to replace the Council and Commission recommended state-by-state conservation equivalency management approach with the Council and Commission non-preferred alternative for coastwide measures. These commenters stated, in support of coastwide measures, that state-by-state conservation equivalency is based on flawed science, is grossly inequitable, and has consistently failed in constraining the recreational fishery to the respective annual targets.

*Response:* NMFS is implementing, through this rule, the Council and Commission recommended management system for the 2008 summer flounder recreational fishery--state-by-state conservation equivalency. See response to comment 8 for additional details. NMFS may disapprove and implement substitute measures when the Council recommends measures that are inconsistent with the goals and objectives of the FMP, the Magnuson-Stevens Act rebuilding requirements for summer flounder, or other applicable law. NMFS has determined that state-by-state conservation equivalency, paired with the Commission's performance-based adjustment factor, satisfies the 2008 regulatory and statutory requirements for summer flounder. As such, NMFS has no compelling reason to disapprove state-by-state conservation equivalency and

<sup>2</sup> Summer Flounder Assessment and Biological Reference Point Update for 2006

substitute coastwide measures for the 2008 recreational fishery.

NMFS acknowledges that state-by-state conservation equivalency has performed poorly, since the summer flounder recreational harvest limit has been exceeded in 5 of the 7 years where it has been utilized. It was for this reason that NMFS cautioned both the Council and Commission that several factors influencing the effectiveness of conservation equivalency be examined, and a new approach or approaches applied for the 2008 fishery. In response, the Commission's Technical Committee examined several areas not previously considered in conservation equivalency analysis. This examination led to the Technical Committee's recommended performance-based adjustment factor designed to reduce the risk of exceeding the 2008 recreational harvest limit.

*Comment 11:* Some commenters stated that state-by-state conservation equivalency has failed too often and will not prevent overfishing in 2008. One of these commenters stated that the 2008 conservation equivalency differs by only the Technical Committee's performance-based adjustment from the system that performed very poorly in 2007, and is not likely to be successful in preventing overfishing. These commenters advocated for implementation of regional or coastwide measures.

*Response:* NMFS has been vocal in raising its concerns about the performance of state-by-state conservation equivalency in recent years. However, as previously indicated in responses 8 and 10, NMFS has determined that the performance-based adjustment required by the Commission's Technical Committee, use of the predicted 2008 average weight, and inseason monitoring of the recreational fishery provides a sufficient basis to responsibly manage the 2008 recreational summer flounder fishery so that the recreational harvest limit is not exceeded, and the mortality objectives of the rebuilding program are met.

*Comment 12:* The State of Maine wrote in support of state-by-state conservation equivalency and clarified that Maine was in the process of revising its current recreational harvest limit of 4 summer flounder per day to 2 summer flounder per day with a minimum fish size of 20 inches (50.80 cm). This clarification was sent in response to the proposed rule that stated Maine had no recreational harvest limit and was not required to submit management measures to the Commission.

*Response:* NMFS supports Maine's decision to implement a minimum fish size and possession limit for 2008 that is consistent with the size and possession limits of the precautionary default level. However, Maine does not have a recreational harvest allocation under the Commission conservation equivalency program and is not, as was stated in the proposed rule, required to submit measures to the Commission for conservation equivalency to be approved by NMFS. Occurrences of summer flounder north of Massachusetts are rare, and it is unlikely that many, if any, fish would be landed by recreational anglers in Maine. MRFSS data from 1998–2007 indicate that no summer flounder were landed by recreational fishermen in Maine for that 10-year period.

#### Classification

The Administrator, Northeast Region, NMFS, determined that this final rule implementing the 2008 summer flounder, scup, and black sea bass recreational management measures is necessary for the conservation and management of the summer flounder, scup, and black sea bass fisheries, and that it is 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 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 April 23, 2008. The recreational summer flounder fishery will be open in eight of nine states by May 24, 2008. The remaining state will open June 10, 2008. Based on historic effort and landings information, and the importance of summer flounder as a recreational fishery target species, participation and landings are expected to be high from the onset of the fishery. 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 until the 2008 recreational management measures become effective. The Federal coastwide measures for the summer flounder fishery do not achieve the necessary reduction in recreational

landings to constrain the fishery to the 2008 recreational harvest limit. It is, therefore, imperative that NMFS implement measures, as quickly as possible, for the 2008 recreational summer flounder fishery to ensure that the mortality objectives of the 2008 recreational harvest limit are not compromised. The conservation equivalent measures approved by the Commission and implemented by this final rule are such measures. Failure of NMFS to implement the 2008 conservation equivalent measures as soon as possible would result in fishery participants operating under the more liberal 2007 measures. The effect of this would be to substantially increase the early fishing season mortality on summer flounder beyond the levels used in estimating the appropriate 2008 measures. This substantially increases the likelihood that the 2008 mortality objectives will be compromised, as the early-season effort is historically high in southern and Mid-Atlantic Bight states, and those fish landed under last year's more liberal measures will contribute to higher recreational fishery mortality than previously accounted for in analyses. The state-by-state conservation equivalent measures will, upon their implementation, restrict the recreational summer flounder coastwide landings within the 2008 recreational harvest limit. The recreational scup fishery does not open until October 1, and the 2008 black sea bass measures remain status quo; therefore, there is no need to waive the delay in effectiveness for these species' 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, NMFS's responses to those comments, and a summary of the analyses completed to support the action. Copies of the EA/RIR/IRFA and supplement are available from the Council and NMFS (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.

*A Summary of the Significant Issues Raised by the Public Comments in Response to the IRFA, a Summary of the Assessment of the Agency of Such Issues, and a Statement of Any Changes Made in the Proposed Rule as a Result of Such Comments*

A summary of the comments received and NMFS' responses thereto is contained in the preamble of this rule. None of those comments addressed specific information contained in the IRFA economic analysis and thus, are not repeated here. No changes have been made from the proposed rule as a result of the comments received by NMFS.

*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 919 vessels possessing a Federal charter/party permit for summer flounder, scup, and/or black sea bass in 2006, the most recent year for which complete permit data are available. However, only 369 of these vessels reported active participation in the recreational summer flounder, scup, and/or black sea bass fisheries in 2006.

*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*

*No-action alternatives.* 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 2007 fishing season. The no-action measures were analyzed in Summer Flounder Alternative 2, Scup Alternative 3, and Black Sea Bass Alternative 1 in the Council's EA/RIR/IRFA.

For summer flounder, state-specific implications of the no-action (coastwide) alternative of a 18.5-inch (46.99-cm) minimum fish size, a 4-fish possession limit, and no closed season would not achieve the mortality objectives required, and, therefore, cannot be continued for the 2008 fishing

season. Similarly the no-action alternative for scup (a 10-inch (25.4-cm) minimum fish size, a 50-fish possession limit, and a fishing season of January 1 through the last day of February and from September 18 through November 30) would result in fishing mortality that exceeds the level established for 2008 and, therefore, cannot be continued for the 2008 fishing season. The implications of the no-action alternative are not substantial for black sea bass. Recreational landings of black sea bass in 2007 were less than the target, and the status quo measures are expected to constrain landings to the 2008 target.

*Summer flounder alternatives.* In seeking to minimize the impact of recreational management measures (minimum fish size, possession limit, and fishing season) on small entities (i.e., Federal party/charter permit holders), NMFS is constrained to implementing measures that meet the conservation objectives of the FMP and Magnuson-Stevens Act rebuilding program requirements. As previously indicated, the no-action alternative for summer flounder was considered but rejected by the Council, and subsequently NMFS, on the grounds that it would not ensure that the 2008 mortality objectives would be met.

The remaining alternatives examined by the Council and forwarded for consideration by NMFS consisted of the preferred alternative of state-by-state conservation equivalency with a precautionary default backstop, and the non-preferred alternative of coastwide measures. These were alternatives 1 and 2, respectively, in the Council's EA/RIR/IRFA. These two alternatives were determined by the Council analyses to satisfy the 2008 conservation objectives for the recreational fishery, i.e., analysis indicated that implementation of either would constrain recreational landings within the 2008 recreational harvest limit. Therefore, either alternative recreational management system could be considered for implementation by NMFS, as the critical metric of satisfying the regulatory and statutory requirements would be met by either.

Next, NMFS considered the recommendation of both the Council and Commission. Both groups recommended implementation of state-by-state conservation equivalency with a precautionary default backstop. In response to NMFS request for more stringent analyses and changes in how conservation equivalency measures are

calculated, the Commission further recommended the used of a performance-based adjustment to further increase the reduction required for the states of Rhode Island, Connecticut, New York, New Jersey, and Virginia for 2008. The conservation equivalency approach allows states some degree of flexibility in the specification of management measures, unlike the application of one set of uniform coastwide measures. The degree of flexibility available to states under conservation equivalency is constrained to a combined suite of minimum fish size, possession limit, and fishing season that will achieve the required percent reduction required for 2008 (i.e., achieve the conservation objectives). This provides the opportunity for states to construct measures that achieve the conservation objectives while providing a state-specific set of measures in lieu of the one-size-fits-all coastwide measure. States that fail to provide measures, or whose measures do not achieve the required reduction, are assigned the more restrictive precautionary default measures.

At this time, it is not possible to determine the precise economic impact on small entities under conservation equivalency. The specific measures adopted for each state were only made available to NMFS from the Commission on April 23, 2008, and were unavailable for analysis during this rulemaking. Because the recreational fisheries in many states will have begun by the time this rule is effective, NMFS has elected to forgo quantitative analysis of the specific conservation equivalency measures as implemented by the individual states as the need to have measures in place in a timely fashion outweighs the benefits of delaying publication of this rule to complete further analysis. However, economic impact is likely to be proportional to the level of landings reductions required for each individual state. As such, the greater percent reduction required for states that have both the initially required reduction as specified by the Council and the performance-based reduction required by the Commission (Table 4), have the potential for higher economic impacts on small entities in comparison to coastwide measures dependent on the configuration of management measures ultimately selected.

TABLE 4. 2008 CONSERVATION EQUIVALENCY STATE SPECIFIC INITIAL PERCENT REDUCTIONS, COMMISSION REQUIRED PERFORMANCE BASED ADJUSTMENTS, AND FINAL PERCENT REDUCTIONS.

State	Initial Percent Reduction Required under Framework Adjustment 2 to the FMP	Commission Performance-Based Reduction Factor	Final Percent Reduction Required by Commission
MA	0	0	0
RI	47.5	7.8	51.6
CT	28.7	1.9	30.1
NY	45.9	33.6	64.0
NJ	39.2	4.3	41.8
DE	41.8	0.0	41.8
MD	56.7	0.0	56.7
VA	13.9	8.9	21.5
NC	34.3	0.0	34.2

For NMFS to disapprove the Council's recommendation for conservation equivalency and substitute coastwide management measures, NMFS must reasonably demonstrate that the recommended measures are either inconsistent with applicable law or otherwise demonstrate that the conservation objectives of the FMP will not be achieved by implementing conservation equivalency. NMFS does not find the Council and Commission's recommendation to be inconsistent with the implementing regulations of the FMP found at § 648.100 or the Magnuson-Stevens Act. Furthermore, NMFS finds that the performance-based adjustment factor paired with the use of the predicted average fish weight for 2008 required by the Commission are meaningful demonstrations to improve the performance of conservation equivalency. These improvements, paired with the potential for inseason closure of the EEZ by NMFS, present a much higher likelihood that conservation equivalency will function in 2008 as designed and will ensure that the recreational harvest level will not be exceeded.

The use of coastwide management measures was considered by NMFS. In fact, as a number of commenters stated in response to the proposed rule, NMFS advocated for a coastwide approach in the early stages of the 2008 recreational fishery management measures development. The economic impacts on small entities under the coastwide measures management system would vary in comparison to the conservation equivalency system dependent on the specific state wherein the small entities operate. In the Council's provided analysis, closed seasons typically result

in a higher economic impact to small entities than do increases in minimum fish sizes or reduction in possession limits. The reason for this is that angler success begins to decline at higher minimum fish size and higher possession limits, yielding lower return on the effectiveness of implementing such measures. Closed seasons, however, are unmistakable in their effectiveness as they permit no harvest irrespective of fish size or possession limit, provided there are no compliance issues. Closed seasons also are typically more easily enforceable. The interplay between the three management measures and the inability to quantitatively assess the impacts of the state's implemented conservation equivalency measures make definitive statements regarding impacts difficult to provide. Both fishery independent and dependent data suggests that larger summer flounder are less common in the southern portion of the management range; therefore, implementation of coastwide measures may have a more profound economic impact on small entities operating in the southern portion of the management area if the minimum fish size is set larger than fish that are typically available in southern states. Conservation equivalency is generally expected to mitigate the economic impact in states with lower required percent reductions for 2008 compared to the coastwide reduction of 36.3 percent. In those states, management measures can be tailored that suit the expressed needs of both small entities and other recreational fishery participants while achieving the required conservation equivalency percent reduction. Conversely, coastwide measures may yield lower

economic impacts for states with the percent reductions greater than the total coastwide level of reduction required for 2008 by permitting smaller minimum fish sizes paired with slightly lower possession limits, and comparable fishing seasons than would be required for implemented under conservation equivalency.

However, NMFS is implementing the Council and Commission's recommended state-by-state conservation equivalency measures for the reasons previously stated: (1) The state-by-state conservation equivalency management system has been modified, by the Commission, from the previously utilized methodology that had yielded a poor performance record; and, (2) NMFS finds no compelling reason to disapprove the Council and Commission's recommended 2008 management system as the analysis provided by the Commission's Technical Committee demonstrates that the improved conservation equivalency system will provide a high likelihood that the 2008 recreational harvest limit will not be exceeded. To further ensure that the 2008 recreational harvest limit is not exceeded, NMFS is prepared to close the EEZ during the fishing season if harvest projections indicate that the 2008 recreational harvest limit may be exceeded before the end of the calendar year.

*Scup alternatives.* Similar to summer flounder, the options available for scup recreational management measures are constrained to selecting a suite of minimum fish size, possession limit, and fishing season measures that achieves the annual conservation objectives. In this case, the conservation objective is a level of recreational scup

landings that is at or below the 2008 scup recreational harvest level. Therefore, the measures available to mitigate the economic impact on small entities is constrained to selection of management measures that will permit the maximum amount of recreational landings while achieving the specified conservation objectives for the fishing season.

For 2008, a coastwide reduction in scup landings of 51.8 percent is necessary to achieve the conservation objective. The Council's EA/RIR/IRFA evaluated alternatives 1 and 2 for scup which would achieve this objective. The Council recommended, and NMFS has implemented, alternative 1 consisting of a 10.5-inch (26.67-cm) minimum fish size, a 15-fish possession limit, and a fishing season of January 1–February 29 and October 1–October 31 because it is projected to achieve a 53.2-percent reduction in scup recreational landings in 2008. Alternative 2, consisting of a 10.5-inch (26.67-cm) minimum fish size, a 15-fish possession limit, and a fishing season of January 1–February 29 and October 1–October 15, is projected to reduce landings by 60.5 percent from 2007 levels. The measures of this alternative are more restrictive than necessary to achieve the conservation objectives for 2008.

The four states where the majority (approximately 97 percent) of scup recreational landings occur—New York, Connecticut, Rhode Island, and Massachusetts—entered into a regional conservation equivalency program in state-waters through the Commission process. In addition, the majority of scup recreational landings come from state waters (93 percent). Thus, the economic impacts on the recreational scup fishery are likely to be further mitigated from the level analyzed by the Council in the EA/RIR/IRFA. It is not possible, nor required, to quantify the extent of the potential reduction in economic impact that occurs from the Commission's regional scup conservation equivalency management system as the system and its measures exist wholly outside the Federal system and occur exclusively in state waters.

#### *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 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 small entity compliance guide are available from NMFS (see **ADDRESSES**) and at the following website: <http://www.nero.noaa.gov>.

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

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: May 16, 2008.

#### **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. In § 648.102, the first sentence is revised to read as follows:

#### **§ 648.102 Time restrictions.**

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 23 through September 1. \*\*\*

■ 3. In § 648.103, paragraph (b) is revised to read as follows:

#### **§ 648.103 Minimum fish sizes.**

(b) Unless otherwise specified pursuant to § 648.107, the minimum size for summer flounder is 19-inch (48.26-cm) TL for all vessels that do not qualify for a moratorium permit, and charter boats holding a moratorium permit if fishing with more than three crew members, or party boats holding a moratorium permit if fishing with passengers for hire or carrying more than five crew members.

■ 4. In § 648.105, the first sentence of paragraph (a) is revised to read as follows:

#### **§ 648.105 Possession restrictions.**

(a) Unless otherwise specified pursuant to § 648.107, no person shall

possess more than two summer flounder in, or harvested from, the EEZ, unless that person is the owner or operator of a fishing vessel issued a summer flounder moratorium permit, or is issued a summer flounder dealer permit.

\* \* \*

\* \* \* \* \*

■ 5. In § 648.107, paragraph (a) introductory text and paragraph (b) are 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 2008 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.

\* \* \* \* \*

(b) Federally permitted vessels subject to the recreational fishing measures of this part, and other recreational fishing vessels subject to the recreational fishing measures of this part and registered in states whose fishery management measures are not determined by the Regional Administrator to be the conservation equivalent of the season, minimum size, and possession limit prescribed in §§ 648.102, 648.103(b) and 648.105(a), respectively, due to the lack of, or the reversal of, a conservation equivalent recommendation from the Summer Flounder Board of the Atlantic States Marine Fisheries Commission, shall be subject to the following precautionary default measures: Season - July 4 through September 1; minimum size - 20.0 inches (50.80 cm); and possession limit - two fish.

■ 6. In § 648.122, paragraph (g) is revised to read as follows:

#### **§ 648.122 Season and area restrictions.**

\* \* \* \* \*

(g) *Time restrictions.* Vessels that are not eligible for a moratorium permit under § 648.4(a)(6), and fishermen subject to the possession limit, may not possess scup, except from January 1 through the last day of February, and from October 1 through October 31. This time period may be adjusted pursuant to the procedures in § 648.120.

■ 7. In § 648.124, paragraph (b) is revised to read as follows:

#### **§ 648.124 Minimum fish sizes.**

\* \* \* \* \*

(b) The minimum size for scup is 10.5 inches (26.67 cm) TL for all vessels that do not have a moratorium permit, or for party and charter vessels that are issued a moratorium permit but are fishing with passengers for hire, or carrying more than three crew members if a charter boat, or more than five crew members if a party boat.

\* \* \* \* \*

■ 8. In § 648.125, the first sentence in paragraph (a) is revised to read as follows:

**§ 648.125 Possession limit.**

(a) No person shall possess more than 15 scup in, or harvested from, the EEZ unless that person is the owner or operator of a fishing vessel issued a scup moratorium permit, or is issued a scup dealer permit. \* \* \*

\* \* \* \* \*

[FR Doc. E8-11601 Filed 5-22-08; 8:45 am]

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**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

**50 CFR Part 679**

[Docket No. 071106673-8011-02]

RIN 0648-X107

**Fisheries of the Exclusive Economic Zone Off Alaska; Yellowfin Sole by Vessels Participating in the Amendment 80 Limited Access Fishery in Bering Sea and Aleutian Islands Management Area**

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

**ACTION:** Temporary rule; closure.

**SUMMARY:** NMFS is closing directed fishing for yellowfin sole by vessels participating in the Amendment 80

limited access fishery in the Bering Sea and Aleutian Islands management area (BSAI). This action is necessary to prevent exceeding the first seasonal allowance of the 2008 halibut bycatch allowance specified for the trawl yellowfin sole fishery category by vessels participating in the Amendment 80 limited access fishery in the BSAI.

**DATES:** Effective 1200 hrs, Alaska local time (A.l.t.), May 19, 2008, through 1200 hrs, A.l.t., July 1, 2008.

**FOR FURTHER INFORMATION CONTACT:** Jennifer Hogan, 907-586-7228.

**SUPPLEMENTARY INFORMATION:** NMFS manages the groundfish fishery in the BSAI according to the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

The first seasonal allowance of the 2008 halibut bycatch allowance specified for the trawl yellowfin sole fishery category by vessels participating in the Amendment 80 limited access fishery for the yellowfin sole fishery category in the BSAI is 214 metric tons as established by the 2008 and 2009 final harvest specifications for groundfish in the BSAI (73 FR 10160, February 26, 2008). See § 679.21(e)(3)(vi)(A) and § 679.91(d)(1) and (3).

In accordance with § 679.21(e)(3)(vi)(B) and § 679.21(e)(7)(v), the Administrator, Alaska Region, NMFS, has determined that the first seasonal allowance of the 2008 halibut bycatch allowance specified for the trawl yellowfin sole fishery category by vessels participating in the Amendment 80 limited access fishery in the BSAI will be caught.

Consequently, NMFS is closing directed fishing for yellowfin sole by vessels participating in the Amendment 80 limited access fishery in the BSAI.

After the effective date of this closure the maximum retainable amounts at § 679.20(e) and (f) apply at any time during a trip.

**Classification**

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA (AA), finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such requirement is impracticable and contrary to the public interest. This requirement is impracticable and contrary to the public interest as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion and would delay the closure of directed fishing for yellowfin sole by vessels participating in the Amendment 80 limited access fishery in the BSAI. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of May 16, 2008.

The AA also finds good cause to waive the 30-day delay in the effective date of this action under 5 U.S.C. 553(d)(3). This finding is based upon the reasons provided above for waiver of prior notice and opportunity for public comment.

This action is required by § 679.21 and is exempt from review under Executive Order 12866.

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

Dated: May 19, 2008.

**Emily H. Menashes,**

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

[FR Doc. 08-1287 Filed 5-19-08; 2:58 pm]

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