

year. A transfer of quota or combination of quotas does not alter any state's percentage share of the overall quota specified in paragraph (d)(1)(i) of this section.

(d) *Recreational specification measures.* The MAFMC shall review the recommendations of the Monitoring Committee and, based on the recommendations and any public comment, recommend to the Regional Administrator measures that are projected to prevent overages of the applicable recreational target, as prescribed in the FMP, for an upcoming fishing year or years. The MAFMC's recommendations must include supporting documentation, as appropriate, concerning the environmental and economic impacts of the recommendations. The MAFMC and the ASMFC will recommend that the Regional Administrator implement either:

(1) *Coastwide measures.* Annual, or multi-year, coastwide management measures projected to achieve the applicable recreational target as prescribed in the FMP, or

(2) *Conservation equivalent measures.* Individual states, or regions formed voluntarily by adjacent states (i.e., multi-State conservation equivalency regions), may implement different combinations of minimum and/or maximum fish sizes, possession limits, and closed seasons that achieve equivalent conservation as the coastwide measures established under paragraph (e)(1) of this section. Each State or multi-State conservation equivalency region may implement measures by mode or area only if the proportional standard error of recreational landing estimates by mode or area for that State is less than 30 percent.

(i) After review of the recommendations, the Regional Administrator will publish a proposed rule in the FEDERAL REGISTER as soon as possible to implement the overall recreational target for the fishing year(s), and the ASMFC's recommendation concerning conservation equivalency, the precautionary default measures, and coastwide measures.

(ii) The ASMFC will review conservation equivalency proposals and determine whether or not they achieve the necessary adjustment to recreational

landings. The ASMFC will provide the Regional Administrator with the individual State and/or multi-State region conservation measures for the approved State and/or multi-State region proposals and, in the case of disapproved State and/or multi-State region proposals, the precautionary default measures that should be applied to a State or region. At the request of the ASMFC, precautionary default measures would apply to federally permitted party/charter vessels and other recreational fishing vessels harvesting summer flounder in or from the EEZ when landing in a State that implements measures not approved by the ASMFC.

(iii) After considering public comment, the Regional Administrator will publish a final rule in the FEDERAL REGISTER to implement either the State or regional conservation equivalency measures or coastwide measures to ensure that the applicable specified target is not exceeded.

(iv) The ASMFC may allow states or regions assigned the precautionary default measures to resubmit revised management measures. The ASMFC will detail the procedures by which the State or region can develop alternate measures. The ASMFC will notify the Regional Administrator of any resubmitted State or regional proposals approved subsequent to publication of the final rule and the Regional Administrator will publish a document in the FEDERAL REGISTER to notify the public.

(e) *Research quota.* See § 648.22(g).

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§ 648.103 Summer flounder accountability measures.

(a) *Commercial sector EEZ closure.* The Regional Administrator shall close the EEZ to fishing for summer flounder by commercial vessels for the remainder of the calendar year by publishing notification in the FEDERAL REGISTER if he/she determines that the inaction of one or more states will cause the commercial sector ACL to be exceeded, or if the commercial fisheries in all states

have been closed. The Regional Administrator may reopen the EEZ if earlier inaction by a state has been remedied by that state, or if commercial fisheries in one or more states have been reopened without causing the sector ACL to be exceeded.

(b) *State commercial landing quotas.* The Regional Administrator will monitor state commercial quotas based on dealer reports and other available information and shall determine the date when a state commercial quota will be harvested. The Regional Administrator shall publish notification in the FEDERAL REGISTER advising a state that, effective upon a specific date, its commercial quota has been harvested and notifying vessel and dealer permit holders that no commercial quota is available for landing summer flounder in that state.

(1) *Commercial ACL overage evaluation.* The commercial sector ACL will be evaluated based on a single-year examination of total catch (landings and dead discards). Both landings and dead discards will be evaluated in determining if the commercial sector ACL has been exceeded.

(2) *Commercial landings overage repayment.* All summer flounder landed for sale in a state shall be applied against that state's annual commercial quota, regardless of where the summer flounder were harvested. Any landings in excess of the commercial quota in any state, inclusive of any state-to-state transfers, will be deducted from that state's annual quota for the following year in the final rule that establishes the annual state-by-state quotas, irrespective of whether the commercial sector ACL is exceeded. The overage deduction will be based on landings for the current year through October 31 and on landings for the previous calendar year that were not included when the overage deduction was made in the final rule that established the annual quota for the current year. If the Regional Administrator determines during the fishing year that any part of an overage deduction was based on erroneous landings data that were in excess of actual landings for the period concerned, he/she will restore the overage that was deducted in error to the appropriate quota allocation. The Re-

gional Administrator will publish notification in the FEDERAL REGISTER announcing such restoration.

(3) *Non-landing accountability measure.* In the event that the commercial ACL is exceeded and that the overage has not been accommodated through the landings-based AM, then the following procedure will be followed:

(i) *Overfishing, rebuilding, or unknown stock status.* If the most recent estimate of biomass is below the B_{MSY} threshold (i.e., B/B_{MSY} is less than 0.5), the stock is under a rebuilding plan, or the biological reference points (B or B_{MSY}) are unknown, and the commercial ACL has been exceeded, then the exact amount, in pounds, by which the most recent year's commercial catch estimate exceeded the most recent year's commercial ACL will be deducted, in the following fishing year from the commercial ACT, as a single-year adjustment.

(ii) *If biomass is above the threshold, but below the target, and the stock is not under rebuilding.* If the most recent estimate of biomass is above the biomass threshold (B/B_{MSY} is greater than 0.5), but below the biomass target (B/B_{MSY} is less than 1.0), and the stock is not under a rebuilding plan, then the following AMs will apply:

(A) If the Commercial ACL has been exceeded, but not the overall ABC, then no single-year AM payback is required.

(B) If the Commercial ACL and ABC have been exceeded, then a scaled single-year adjustment to the commercial ACT will be made, in the following fishing year. The ACT will be reduced by the exact amount, in pounds, of the product of the overage, defined as the difference between the commercial catch and the commercial ACT, and the payback coefficient. The payback coefficient is the difference between the most recent estimate of biomass and B_{MSY} (i.e., $B_{MSY} - B$) divided by one-half of B_{MSY} .

(iii) *If biomass is above B_{MSY} .* If the most recent estimate of biomass is above B_{MSY} (i.e., B/B_{MSY} is greater than 1.0), then no single-year AM payback is required.

(c) *Recreational ACL Evaluation.* The recreational sector ACL will be evaluated based on a 3-year moving average comparison of total catch (landings

and dead discards). Both landings and dead discards will be evaluated in determining if the 3-year average recreational sector ACL has been exceeded.

(d) *Recreational AMs.* If the recreational ACL is exceeded, then the following procedure will be followed:

(1) *If biomass is below the threshold, the stock is under rebuilding, or biological reference points are unknown.* If the most recent estimate of biomass is below the BMSY threshold (*i.e.*, B/B_{MSY} is less than 0.5), the stock is under a rebuilding plan, or the biological reference points (B or BMSY) are unknown, and the recreational ACL has been exceeded, then the exact amount, in pounds, by which the most recent 3-year average recreational catch estimate exceeded the most recent 3-year average recreational ACL will be deducted, in the following fishing year, or as soon as possible thereafter, once catch data are available, from the recreational ACT. This payback may be evenly spread over 2 years if doing so allows for use of identical recreational management measures across the upcoming 2 years.

(2) *If biomass is above the threshold, but below the target, and the stock is not under rebuilding.* If the most recent estimate of biomass is above the biomass threshold (B/B_{MSY} is greater than 0.5), but below the biomass target (B/B_{MSY} is less than 1.0), and the stock is not under a rebuilding plan, then the following AMs will apply:

(i) *If the Recreational ACL has been exceeded.* If the Recreational ACL has been exceeded, then adjustments to the recreational management measures, taking into account the performance of the measures and conditions that precipitated the overage, will be made in the following fishing year, or as soon as possible thereafter, once catch data are available, as a single-year adjustment.

(ii) *If the fishing mortality (F) has exceeded FMSY (or the proxy).* If the most recent estimate of total fishing mortality exceeds FMSY (or the proxy), then an adjustment to the recreational ACT will be made as soon as possible, once catch data are available, as described in paragraph (d)(2)(ii)(A) of this section. If an estimate of total fishing

mortality is not available for the most recent complete year of catch data, then a comparison of total catch relative to the ABC will be used.

(A) *Adjustment to Recreational ACT.* If an adjustment to the following year's Recreational ACT is required, then the ACT will be reduced by the exact amount, in pounds, of the product of the overage, defined as the difference between the most recent 3-year average recreational catch and the most recent 3-year recreational ACL, and the payback coefficient, as specified in paragraph (d)(2)(ii)(B) of this section. This payback may be evenly spread over 2 years if doing so allows for use of identical recreational management measures across the upcoming 2 years.

(B) *Payback coefficient.* The payback coefficient is the difference between the most recent estimate of biomass and BMSY (*i.e.*, $B_{MSY} - B$) divided by one-half of BMSY.

(3) *If biomass is above BMSY.* If the most recent estimate of biomass is above BMSY (*i.e.*, B/B_{MSY} is greater than 1.0), then adjustments to the recreational management measures, taking into account the performance of the measures and conditions that precipitated the overage, will be made in the following fishing year, or as soon as possible thereafter, once catch data are available, as a single-year adjustment.

(e) *State/Federal disconnect AM.* If the total catch, allowable landings, commercial quotas, and/or RHL measures adopted by the ASMFC Summer Flounder, Scup and Black Sea Bass Management Board and the MAFMC differ for a given fishing year, administrative action will be taken as soon as possible to revisit the respective recommendations of the two groups. The intent of this action shall be to achieve alignment through consistent state and Federal measures such that no differential effects occur on Federal permit holders.

[76 FR 60628, Sept. 29, 2011, as amended at 78 FR 76763, Dec. 19, 2013; 83 FR 53826, Oct. 25, 2018; 88 FR 14508, Mar. 9, 2023]

§ 648.104 Summer flounder size requirements.

(a) *Moratorium (commercial) permitted vessels.* The minimum size for summer