

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  $B_{MSY}$  (*i.e.*,  $B_{MSY} - B$ ) divided by one-half of  $B_{MSY}$ .

(3) *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 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

## Fishery Conservation and Management

## § 648.106

flounder is 14 inches (35.6 cm) TL for all vessels issued a moratorium permit under §648.4(a)(3), except on board party and charter boats carrying passengers for hire or carrying more than three crew members, if a charter boat, or more than five crew members, if a party boat.

(b) *Party/charter permitted vessels and recreational fishery participants.* The minimum size for summer flounder is 18 inches (45.72 cm) total length for all vessels that do not qualify for a summer flounder moratorium permit under §648.4(a)(3), and charter boats holding a summer flounder moratorium permit if fishing with more than three crew members, or party boats holding a summer flounder moratorium permit if fishing with passengers for hire or carrying more than five crew members, unless otherwise specified in the conservation equivalency regulations at §648.107. If conservation equivalency is not in effect in any given year, possession of smaller (or larger, if applicable) summer flounder harvested from state waters is allowed for state-only permitted vessels when transiting Federal waters within the Block Island Sound Transit Area provided they follow the provisions at §648.111 and abide by state regulations.

(c) *Measurement.* The size limits in this section apply to whole fish or to any part of a fish found in possession, e.g., fillets, except that party and charter vessels fishing exclusively in state waters possessing valid state permits authorizing filleting at sea may possess fillets smaller than the size specified if all state requirements are met.

[76 FR 60629, Sept. 29, 2011, as amended at 78 FR 37479, June 21, 2013; 82 FR 31494, July 7, 2017; 84 FR 65702, Nov. 29, 2019; 87 FR 35116, June 9, 2022; 88 FR 55418, Aug. 15, 2023]

### § 648.105 Summer flounder recreational fishing season.

No person may fish for summer flounder in the EEZ from May 15 through September 22 unless that person is the owner or operator of a fishing vessel issued a commercial summer flounder moratorium permit, or is issued a summer flounder dealer permit, or unless otherwise specified in the conservation equivalency measures at §648.107. Persons aboard a commer-

cial vessel that is not eligible for a summer flounder moratorium permit are subject to this recreational fishing season. This time period may be adjusted pursuant to the procedures in §648.102. Possession of summer flounder harvested from state waters during this time is allowed for state-only permitted vessels when transiting Federal waters within the Block Island Sound Transit Area provided they follow the provisions at §648.111 and abide by state regulations.

[88 FR 55418, Aug. 15, 2023]

### § 648.106 Summer flounder possession restrictions.

(a) *Party/charter and recreational possession limits.* No person shall possess more than three summer flounder in, or harvested from, the EEZ, per trip 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, or unless otherwise specified in the conservation equivalency measures at §648.107. Persons aboard a commercial vessel that is not eligible for a summer flounder moratorium permit are subject to this possession limit. The owner, operator, and crew of a charter or party boat issued a summer flounder moratorium permit are subject to the possession limit when carrying passengers for hire or when carrying more than five crew members for a party boat, or more than three crew members for a charter boat. This possession limit may be adjusted pursuant to the procedures in §648.102. Possession of summer flounder harvested from state waters above this possession limit is allowed for state-only permitted vessels when transiting Federal waters within the Block Island Sound Transit Area provided they follow the provisions at §648.111 and abide by state regulations.

(b) If whole summer flounder are processed into fillets, the number of fillets will be converted to whole summer flounder at the place of landing by dividing the fillet number by two. If summer flounder are filleted into single (butterfly) fillets, each fillet is deemed to be from one whole summer flounder.