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Federal Communications Commission.

Marlene H. Dortch,
Secretary.

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No.040326103-4239-03; I.D. 031504A]

RIN 0648-AQ82

Fisheries of the Northeastern United States; Summer Flounder Recreational Fishery; Fishing Year 2004; New York Measures

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

ACTION: Final rule.

SUMMARY: NMFS announces approval of conservation equivalent recreational management measures for summer flounder in New York for the remainder of 2004. This determination is based on a recommendation from the Summer

Flounder Board of the Atlantic States Marine Fisheries Commission.

DATES: Effective August 31, 2004.

FOR FURTHER INFORMATION CONTACT: Sarah McLaughlin, Fishery Policy Analyst, (978) 281-9279, fax (978) 281-9135.

SUPPLEMENTARY INFORMATION: The summer flounder conservation equivalency determination process is described in the preamble of the final rule to implement Framework Adjustment 2 to the Summer Flounder, Scup, and Black Sea Bass Fishery Management Plan (FMP) (66 FR 36208, July 11, 2001), and in the preamble to the proposed rule to implement the 2004 recreational management measures for summer flounder, scup, and black sea bass (69 FR 19805, April 14, 2004).

NMFS published a final rule in the **Federal Register** on July 13, 2004 (69 FR 41980), implementing recreational management measures for the summer flounder, scup, and black sea bass fisheries for 2004. Based on the recommendation of the Atlantic States Marine Fisheries Commission (Commission), for states other than New York, NMFS determined that the summer flounder recreational fishing measures proposed to be implemented by the states for 2004 were the conservation equivalent of the season, minimum size, and possession limit prescribed in §§ 648.102, 648.103, and 648.105(a), respectively. Pursuant to the regulation at § 648.107(a)(1), vessels subject to the Federal recreational summer flounder fishing measures and landing summer flounder in one of the states with an approved conservation equivalency program are not subject to the more restrictive Federal measures, pursuant to the provisions of § 648.4(b), and instead are subject to the recreational fishing measures implemented by the state in which they land. Pursuant to § 648.107(b), federally permitted vessels subject to the recreational summer flounder fishing measures and other recreational fishing

vessels, registered in states and subject to the Federal recreational summer flounder fishing measures, that land in New York were subject to the following precautionary default measures: An open season January 1 through December 31; a minimum size of 18 inches (45.7 cm) total length; and a possession limit of one fish. The precautionary default measures are defined as the measures that would achieve at least the overall required reduction in landings for each state.

The Commission has notified NMFS that, effective July 30, 2004, New York implemented emergency regulations that are the conservation equivalent of the season, minimum size, and possession limit prescribed in §§ 648.102, 648.103, and 648.105(a), respectively. With regard to New York, based on Commission approval of the state's emergency measures, NMFS announces a waiver of the permit condition at § 648.4(b), which requires federally permitted vessels to comply with the more restrictive management measures when state and Federal measures differ. Therefore, effective immediately, federally permitted charter/party vessels and recreational vessels fishing for summer flounder in the Exclusive Economic Zone (EEZ) and landing in New York are subject to the recreational management measures as implemented by New York, i.e., an 18-inch (45.7-cm) minimum size, a 3-fish possession limit, and an open season of May 15 through September 6. NMFS amends § 648.107(a) to indicate that the recreational management measures implemented by the States of Massachusetts through North Carolina have been determined to be the conservation equivalent of the season, minimum size, and possession limit prescribed in §§ 648.102, 648.103, and 648.105(a), respectively. The table below replaces Table 2 as published in the recreational management measures final rule on July 13, 2004 (69 FR 41980).

2004 STATE RECREATIONAL MANAGEMENT MEASURES FOR SUMMER FLOUNDER

State	Minimum Size (inches)	Minimum Size (cm)	Possession Limit (number of fish)	Open Season
MA	16.5	41.9	7	Year-Round.
RI	17.5	44.5	7	April 1 through December 31.
CT	17	43.2	6	Year-Round.
NY	18	45.7	3	May 15 through September 6.
NJ	16.5	41.9	8	May 8 through October 11.
DE	17.5	44.5	4	Year-Round.
MD	16	40.6	3	Year-Round.
VA	17	43.2	6	March 29 through December 31.
NC	14	35.6	8	Year-Round.

Classification

This action is required by 50 CFR part 648. This final rule has been determined to be not significant for purposes of Executive Order 12866.

This final rule follows a rulemaking that implemented the recreational specifications for the 2004 summer flounder fishery. Coincidental with soliciting comments on the actual recreational specifications of possession limit, minimum size, and season, the public was invited to comment on the prospect of implementing the recreational measures through the conservation equivalency mechanism as opposed to implementing them as Federal coastwide measures. Conservation equivalency allows states with recreational management plans approved by the Commission's Summer Flounder Technical Committee and the Administrator, Northeast Region, NMFS (Regional Administrator) to implement a modified possession limit, minimum size, and season provided it achieves such state's required reduction in recreational fishing effort. This enables states to tailor their measures to a degree to address the differing circumstances of their fisheries occasioned by the seasonal movement of the stock or the predominance of certain sized summer flounder in their waters. Once a conservation equivalent state plan is approved, the Regional Administrator waives the application of § 648.4(b); this section of the regulations requires federally permitted vessels to abide by the stricter of the state or Federal measures. In the final rule implementing the recreational specifications, the public was advised that the recreational measures implemented by New York were not approved as a conservation equivalent plan. New York had originally submitted several recreational management plans to the Technical Committee that could have served as a basis to approve a New York plan as a conservation equivalent to the Federal coastwide measures. However, in the end, New York elected to implement less restrictive measures. Consequently, federally permitted vessels from New

York are now subject to the precautionary default measures in § 648.107(b). These measures are much more restrictive than any measures implemented by New York or any of the other states. This final rule reflects that a review of a newly submitted recreational management plan by New York concluded that it is the conservation equivalent to the Federal coastwide measures. Soliciting prior comment on this rule will cause New York recreational fishermen fishing in the exclusive economic zone, particularly the party and charter boat fleet, to forego a considerable benefit. The New York recreational fishery is scheduled to close on September 6, 2004. Prior comment on this final rule will prevent this rule from becoming effective before the closure of the New York recreational fishery. The recreational fishing measures that would be implemented for federally permitted New York vessels by this final rule allow for a greater harvest of summer flounder than the precautionary default measures that will remain in effect until this final rule is implemented. Therefore, the Assistant Administrator for Fisheries, NOAA, finds pursuant to 5 U.S.C. 553(b) that prior notice and comment on this final rule is impracticable.

In addition, the Assistant Administrator for Fisheries, NOAA, finds, pursuant to 5 U.S.C. 553(d)(1), that this final rule relieves a restriction and, therefore, makes this rule effective immediately. The party and charter boats from New York are currently subject to the precautionary default measures. These precautionary default measures result in a decrease in recreational fishing effort well in excess of the 48.5 percent that the New York measures must achieve to be considered the conservation equivalent of the Federal coastwide measures. As noted above, these measures are far more restrictive than the measures that will be in effect in New York waters as a result of this rule or to which vessels from other states fishing in the exclusive economic zone are subject.

A Final Regulatory Flexibility Analysis was prepared, pursuant to 5

U.S.C. 604(a), as part of the final rule to implement the 2004 recreational management measures for the summer flounder, scup, and black sea bass fisheries (69 FR 41980, July 13, 2004).

A small entity compliance guide will be sent to all holders of New York Federal party/charter permits issued for the summer flounder fisheries. In addition, copies of this notice and guide (i.e., permit holder letter) 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: August 30, 2004.

Rebecca Lent,

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 § 648.107, 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 the States of Massachusetts, Rhode Island, Connecticut, New Jersey, New York, Delaware, Maryland, Virginia, and North Carolina for 2004 are the conservation equivalent of the season, minimum 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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