

Dated: August 30, 1999.

**Robert Springer,**  
Acting Regional Administrator,  
Region V.

40 CFR part 300 is amended as follows:

#### **PART 300—[AMENDED]**

1. The authority citation for part 300 continues to read as follows:

**Authority:** 33 U.S.C. 1321(c)(2); 42 U.S.C. 9601–9657; E.O. 12777, 56 FR 54757, 3 CFR, 1991 Comp.; p. 351; E.O. 12580, 52 FR 2923, 3 CFR, 1987 Comp.; p. 193.

#### **Appendix B—[Amended]**

2. Table 1 of Appendix B to part 300 is amended by removing the Site “Mason County Landfill, Pere Marquette Twp, Michigan.”

[FR Doc. 99–23281 Filed 9–8–99; 8:45 am]

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### **DEPARTMENT OF COMMERCE**

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

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

[Docket No. 990422103–9209–02; I.D. 031099B]

RIN 0648–AL75

#### **Fisheries of the Northeastern United States; Fishery Management Plan for the Summer Flounder, Scup, and Black Sea Bass Fisheries; Recreational Measures for the 1999 Fisheries**

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

**ACTION:** Final rule.

**SUMMARY:** SUMMARY: NMFS issues this final rule to implement annual Federal recreational measures for the 1999 summer flounder, scup, and black sea bass fisheries. The purpose of these measures is to prevent overfishing of the summer flounder, scup, and black sea bass resources. In addition, NMFS issues interim measures to allow states to implement a conservation equivalency provision. This provision allows states to implement measures for the summer flounder recreational fishery that are alternatives to the annual Federal measures, yet achieve a reduction in fishing mortality equivalent to that achieved by the annual Federal measures.

**DATES:** Effective September 9, 1999, except for § 648.107 which is effective October 12, 1999.

**ADDRESSES:** Copies of the Environmental Assessment (EA), Regulatory Impact Review (RIR), and Final Regulatory Flexibility Analysis (FRFA), are available from: Jon C. Rittgers, Acting Regional Administrator, National Marine Fisheries Service, One Blackburn Drive, Gloucester, MA 01930–2298.

**FOR FURTHER INFORMATION CONTACT:** Paul H. Jones, Fishery Policy Analyst, (978) 281–9273.

#### **SUPPLEMENTARY INFORMATION:**

##### **Background**

The Fishery Management Plan for the Summer Flounder, Scup, and Black Sea Bass Fisheries (FMP) outlines the process for specifying annual recreational measures. The FMP has established Monitoring Committees (Committees) for each of the three fisheries comprised of representatives from the Atlantic States Marine Fisheries Commission (Commission), the Mid-Atlantic Fishery Management Council (Council), the New England and

South Atlantic Fishery Management Councils, and NMFS. The Committees are required to review annually scientific and other relevant information and to recommend measures necessary to achieve the recreational harvest limits for the summer flounder, scup, and black sea bass fisheries. These recommended measures are limited to minimum fish sizes, possession limits, and closed seasons. The Council's Demersal Species Committee and the Commission's Summer Flounder, Scup, and Black Sea Bass Board (Board) then consider the Monitoring Committees' recommendations and any public comment in making their recommendations. The Council reviews the Demersal Committee recommendations, makes its own decision, in turn, and submits its recommendation to NMFS.

Final specifications for the 1999 summer flounder, scup, and black sea bass fisheries were published on December 31, 1998 (63 FR 72203), and included a recreational harvest limit of 7.41 million lb (3.361 million kg) for summer flounder; 1.24 million lb (0.562 million kg) for scup; and 3.14 million lb (1.42 million kg) for black sea bass. A proposed rule to implement annual Federal recreational measures for the 1999 summer flounder, scup, and black sea bass recreational fisheries was published on April 30, 1999 (64 FR 23256), and contained various combinations of one or more management measures, such as minimum fish size, possession limit, and a closed season. The recreational measures contained in this final rule are unchanged from those that were published in the proposed rule, and are listed below. A complete discussion of the recreational measures appears in the proposed rule and is not repeated here.

#### **1999 Recreational Measures**

	Minimum Size (length)	Possession Limit	Closed Season
Summer Flounder	15 inches (38 cm)	8–fish	September 12 of each year, through May 28 of each following year
Scup	7 inches (18 cm)	None	None
Black Sea Bass	10 inches (25 cm)	None	None

#### **Interim Measure on Summer Flounder Conservation Equivalency**

The proposed rule for the annual recreational measures included an interim measure that would allow the states to implement recreational measures as alternatives to the annual Federal summer flounder measures that

would result in the 40–percent reduction in the summer flounder catch in 1999 compared to 1998. A 40–percent reduction is necessary because the recreational harvest limit for 1999 is the same as it was in 1998, and there was about a 40–percent overage of that harvest limit in 1998. The states may select a combination of minimum fish

sizes, possession limits, and closed seasons. States that wish to implement equivalent measures are required to submit proposed management options to the Commission for approval. In anticipation of implementation of the conservation equivalency provision, states have already selected alternative measures designed to achieve the

required 40-percent reduction in the recreational summer flounder harvest. The Commission has reviewed the states' proposed alternative measures and has found through the procedure described in § 648.107(b) that they will achieve the summer flounder harvest reduction. Once the Commission approves a state equivalency proposal, the Commission is required to recommend to NMFS that a notice be published to waive the application of the annual Federal summer flounder measures specified in this rule within a given state, and notify the public of the state's equivalent measures. That recommendation is now being prepared by the Commission, and NMFS will publish a notice shortly after this final rule.

The conservation equivalency provision relies on annual Federal summer flounder measures that are subject to public comment. The conservation equivalency of alternative state measures will be determined in comparison to the annual Federal summer flounder measures. There is no change to the annual Federal summer flounder measures identified in the proposed rule, so no further Commission action is required. No comments were received during the comment period on implementation of the conservation equivalency provision.

The issuance of interim measures is authorized by section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act. The conservation equivalency provision addresses concerns for some states about the inappropriateness of annual Federal summer flounder measures to achieve the 40-percent summer flounder harvest reduction. It addresses overfishing by allowing states to implement conservation equivalent measures for the recreational summer flounder fishery that would result in the 40-percent reduction in catch required to achieve the 1999 harvest limit while not exceeding it. NMFS reminded the Council at its June 1999 meeting that the Council must include the conservation equivalent provision in an FMP amendment or framework action in order to establish it permanently.

#### **Comments and Responses**

One comment was received from the Council concerning the summer flounder closed season.

*Comment:* Council staff stated their belief that the summer flounder closed season proposed by NMFS differed from that adopted by the Council and the Commission; specifically, Council staff stated that the Council and Commission adopted a closed season only for the

1999 calendar year from January 1 through May 28, 1999, and September 12 through December 31, 1999.

*Response:* NMFS finds that the Council staff mistakenly thought the Council intended to close the recreational summer flounder fishery for only the 1999 calendar year. A review of the administrative record concerning the actions discussed by the Council and Commission during their joint December 1998 meeting shows the following language in the final motion: "a closure of September 12 through May 28." NMFS finds the dates published in the proposed rule reflect the intent of the Council/Commission. Further, if at a later date the Council and Commission decide to recommend only a 1999 closed season, then they may adjust the dates pursuant to the procedures in § 648.100. Therefore, the dates associated with the closed season for the summer flounder recreational fishery will be from September 12 of each year, through May 28 of each following year.

#### **Changes in the Final Rule From the Proposed Rule**

In § 648.107, paragraph (b) is revised to improve clarity and by inserting the words "or greater" in the second sentence to clarify when conservation equivalent measures may be implemented without Summer Flounder Technical Committee review.

#### **Classification**

This final rule is required by 50 CFR part 648.

A review of the administrative record indicates the Council intended that the recreational fishery for summer flounder be closed September 12 through May 28. Continued harvest of summer flounder in the recreational fishery during a 30-day delay in the effective date would reduce the likelihood of attaining the objective of this rule (i.e., a 40-percent reduction in landings in 1999 compared to 1998). Meeting this objective is necessary to comply with the FMP's maximum fishing mortality rate for 1999, and to meet the rebuilding schedule. For these reasons, under 5 U.S.C. 553(d)(3), the AA finds for good cause that a 30-day delay in the effective date of this rule would be contrary to the public interest. Fishermen will be notified of the September 12 recreational fishery closure via NOAA weather radio, Coast Guard announcements, and other available means of notification.

Because prior notice and an opportunity for public comment are not required for the interim measure (i.e., the conservation equivalency provision) by 5 U.S.C. 553, or any other law, the

analytical requirements of the Regulatory Flexibility Act, 5 U.S.C. 601 et seq., are inapplicable.

NMFS has completed a FRFA for the other provision of this rule (i.e., the September 12 through May 28 closed season for summer flounder), pursuant to 5 U.S.C. 604 of the Regulatory Flexibility Act. The FRFA describes the impact this final rule will have on small entities. A copy of the FRFA can be obtained from the Northeast Regional Office of NMFS (see **ADDRESSES**). A summary of the FRFA follows.

The FRFA discusses (1) the need for, and objectives, of the rule; (2) public comments on the IRFA; (3) the number of small entities to which the rule will apply; (4) reporting and recordkeeping requirements; (5) reasons for selecting the alternatives adopted in the final rule and rejecting the alternatives; and (6) the measures that minimize the economic impact of this action.

The need for, and objectives of, the final measures in the rule are to prevent overfishing of the summer flounder, scup, and black sea bass resources.

There were no public comments on the IRFA.

Data from the Northeast Region's permit application database indicate that 710 vessels were permitted in 1997 to take part in the summer flounder, scup, and/or black sea bass fisheries in the EEZ. Analysis of NMFS Vessel Trip Report data indicates that 348 party/charter vessels participated in the summer flounder, scup, or black sea bass fisheries in 1997. The final recreational measures apply to these entities.

This rule does not propose new reporting or recordkeeping measures. There are no changes to existing reporting or recordkeeping requirements.

Current summer flounder recreational measures are a 15-inch (38-cm) minimum fish size and an 8-fish possession limit. This rule does not change the current 15-inch (38-cm) minimum size and 8-fish possession limit, but implements a closed season from September 12 through May 28. As such, the difference between the summer flounder recreational measures and the status quo is the implementation of a closed season starting September 12, 1999. The three annual Federal measures are intended to reduce landings in 1999 by over 40 percent compared to 1998. States are required to implement the annual Federal recreational management measures or other measures that will achieve a 40-percent reduction in landings. This would allow states to

deal with burden issues associated with the implementation of any component (e.g., seasonal closures) of this measure.

For summer flounder, two alternatives other than the selected alternative were considered. These alternatives were: a) a 15-inch (38-cm) minimum fish size, a 6-fish possession limit, and a closed season from August 1 to August 31; and b) a 15-inch (38-cm) minimum fish size, a 4-fish possession limit, and a closed season from January to June of each year. These alternatives could potentially reduce landings by 45 percent. These restrictive limits (i.e., lower possession limits, greater minimum size limits, and/or shorter seasons) would prevent anglers from exceeding the recreational harvest limit in 1999. However, given the popularity of summer flounder among anglers as the most frequently sought after species in the Mid-Atlantic in 1997, the more limiting time frame proposed in the non-selected alternatives may affect angler satisfaction and/or demand for party/charter trips; therefore, they were rejected.

This rule maintains the status quo for scup for 1999. Therefore, the current recreational management measure remains in effect (7-inch (18-cm) minimum size, no possession limit, and no closed season). The minimum size currently in effect could potentially reduce recreational landings by less than two percent.

For scup, two alternatives other than the selected alternative were considered. These alternatives were: a) an 8-inch (20-cm) minimum fish size, a 25-fish possession limit, and no closed season; and b) an 8-inch (20-cm) minimum fish size, a 35-fish possession limit, and no closed season. Both of these alternatives could potentially decrease landings by 5 percent over the selected alternative. Those alternatives were rejected based on concerns that cancellation of party/charter trips would result and cause adverse economic impacts.

For black sea bass, this rule maintains the current management measures (10-inch (25-cm) minimum size, no possession limit, and no closed season for 1999). This no-change alternative was selected to potentially reduce recreational landings by approximately 14 percent. Two alternatives other than

the selected alternative were considered. These alternatives were: a) a 10-inch (25-cm) minimum fish size, no possession limit, and a closed season from August 1 to August 15; and b) a 10-inch (25-cm) minimum fish size, a 20-fish possession limit, and no closed season. These alternatives could decrease landings by 15 percent and 18 percent, respectively. These alternatives could result in a greater reduction in landings of approximately 1 percent and 4 percent, respectively, than the selected alternative. Those alternatives were rejected because of concerns that the additional catch restrictions would result in cancellation of party/charter trips, and cause adverse economic impacts.

This final rule has been determined to be not significant for purposes of E.O. 12866.

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

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: September 2, 1999.

**Andrew A. Rosenberg,**

*Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.*

For the reasons set out in the preamble, 50 CFR part 648 is amended as follows:

#### PART 648—FISHERIES OF THE NORTHEASTERN UNITED STATES

1. The authority citation for part 648 continues to read as follows:

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

2. Section 648.102 is revised to read as follows:

##### § 648.102 Time restrictions.

Vessels that are not eligible for a moratorium permit under § 648.4(a)(3) and any person subject to the possession limit may fish for summer flounder only from May 29 through September 11. This time period may be adjusted pursuant to the procedures in § 648.100.

3. Section 648.107 is added to subpart G to read as follows:

##### § 648.107 Conservation equivalent measures for the recreational summer flounder fishery.

(a) Through March 9, 2000, states may implement on an annual basis conservation equivalent measures that

reduce the recreational catch to the same extent as the annual Federal summer flounder measures specified under § 648.100(c) to achieve the recreational harvest limit in any year. These measures would be a different combination of minimum fish sizes, possession limits, and closed seasons that are the conservation equivalent of those Federal summer flounder measures specified on an annual basis.

(b) A determination of equivalency would be made annually for any state proposing alternative recreational measures by the Summer Flounder Technical Committee of the Commission. Conservation equivalent measures may be implemented by any state without a determination of equivalency by the Summer Flounder Technical Committee review, but only if states use the state-specific tables provided by the Commission and maintain a 15-inch (38-cm) or greater minimum fish size.

(1) Once a state receives a determination of equivalency from the Summer Flounder Technical Committee or a state implements conservation equivalent measures contained in the state-specific table provided by the Commission, the Commission will recommend to the Regional Administrator that a notification be published in the **Federal Register** to waive the annual Federal summer flounder measures specified under § 648.100(c) and to notify vessel permit holders of the equivalent measures approved by the Summer Flounder Technical Committee for landing summer flounder in that state.

(2) States electing not to implement conservation equivalent measures or states that did not receive a determination of equivalency from the Summer Flounder Technical Committee and not implementing conservation equivalent measures contained in the state-specific table provided by the Commission would be required to implement the annual Federal summer flounder measures specified under § 648.100(c) in accordance with the provisions of the Fishery Management Plan for the Summer Flounder, Scup, and Black Sea Bass Fisheries.

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