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Dated: May 10, 2006.

**Tom Luce,**

*Assistant Secretary, Office of Planning, Evaluation and Policy Development.*

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 648

[Docket No. 060503118-6118-01; I.D. 042606E]

RIN 0648-AT26

#### Fisheries of the Northeastern United States; Summer Flounder, Scup, and Black Sea Bass Fisheries; Framework Adjustment 6

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

**ACTION:** Proposed rule; request for comments.

**SUMMARY:** NMFS proposes measures contained in Framework Adjustment 6 (Framework 6) to the Summer Flounder, Scup, and Black Sea Bass Fishery Management Plan (FMP) that would allow regional conservation equivalency in the summer flounder recreational fishery. The intent is to provide flexibility and efficiency to the management of the summer flounder recreational fishery, specifically by expanding the suite of management tools available when conservation equivalency is implemented.

**DATES:** Comments must be received on or before May 30, 2006.

**ADDRESSES:** You may submit comments by any of the following methods:

- E-mail: [FSBFW6@noaa.gov](mailto:FSBFW6@noaa.gov). Include in the subject line the following identifier: "Comments on Summer Flounder Framework 6."

- Federal e-rulemaking portal: <http://www.regulations.gov>.

- Mail: Patricia A. Kurkul, Regional Administrator, NMFS, Northeast Regional Office, One Blackburn Drive, Gloucester, MA 01930. Mark the outside of the envelope: "Comments on Summer Flounder Framework 6."

- Fax: (978) 281-9135.

Copies 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 New Street, Dover, DE 19901-6790. The EA/RIR/IRFA is also accessible via the Internet at <http://www.nero.noaa.gov>.

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

#### 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 management units specified in the FMP include summer flounder (*Paralichthys dentatus*) in U.S. waters of the Atlantic Ocean from the southern border of North Carolina northward to the U.S./Canada border, and scup (*Stenotomus chrysops*) and black sea bass (*Centropristis striata*) in U.S. waters of the Atlantic Ocean from 35°15.3' N. lat. (the latitude of Cape Hatteras Lighthouse, Buxton, NC) northward to the U.S./Canada border.

The 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 measures that apply in the Exclusive Economic Zone (EEZ). The states manage these fisheries within 3 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 Council and the Commission seek to expand the suite of management tools available for management of the summer flounder recreational fishery when conservation equivalency is recommended by the Council. The Council initiated Framework 6, pursuant to § 648.108, in order to address issues related to the administration of the summer flounder recreational fishery, while continuing to achieve the management objectives of the FMP. Framework 6 complements Addendum XVII to the Interstate Summer Flounder, Scup, and Black Sea Bass FMP.

In 2001, NMFS implemented Framework Adjustment 2 to the FMP (Framework 2), which established a process that makes conservation equivalency an option for the summer flounder recreational fishery (66 FR 36208, July 11, 2001). Conservation equivalency allows each state to establish its own recreational management measures (possession limits, minimum fish size, and fishing seasons) to achieve its state harvest limit, as long as the combined effect of all of the states' management measures achieves the same level of conservation as would Federal coastwide measures developed to achieve the overall recreational harvest limit. Conservation equivalency has been approved for the summer flounder recreational fishery each year since 2002.

During the development of Framework 2, the Council considered but did not approve an alternative that would divide the recreational harvest limit into three subregions: Northern (MA, RI, CT), Central (NY, NJ, DE), and Southern (MD, Potomac River Fisheries Commission, VA, and NC). Development of Framework 6 was necessary to allow for modification of the state-specific conservation equivalency procedures as established in Framework 2. Framework 6 would allow for the voluntary formation of multi-state regions by two or more adjacent states for the purpose of setting regional, conservation-equivalent recreational summer flounder fishing measures. Using guidelines approved by both the Council and the Commission, multi-state conservation equivalency regions would develop fishing measures (i.e., minimum fish size, possession limits, and fishing seasons) intended to maximize landings in the region, without resulting in overages of the regional targets (in number of fish). All states forming a region would be required to implement identical recreational fishery regulations.

Currently, the Council and Board recommend annually that either state-

specific recreational measures be developed (conservation equivalency) or coastwide management measures be implemented by all states to ensure that the recreational harvest limit will not be exceeded. The Commission's conservation equivalency guidelines require the states to determine and implement appropriate state-specific management measures to achieve state-specific harvest limits. Under this approach, each state may implement unique management measures appropriate to that state, so long as these measures are determined by the Commission to provide equivalent conservation as would Federal coastwide measures developed to achieve the overall recreational harvest limit.

For each fishing year, if the Council recommends conservation equivalency, the Board requires that each state submit its conservation equivalency proposal to the Commission by January 15. The Commission's Summer Flounder Technical Committee then evaluates the proposals and advises the Board of each proposal's consistency with respect to achieving the coastwide recreational harvest limit. The Commission invites public participation in its review process by allowing public comment on the state proposals at the Technical Committee meeting and Board meeting. The Board meets in February to approve or disapprove the state management proposals. Once the states select and submit their final summer flounder management measures to the Commission, the Commission officially notifies NMFS as to which state proposals have been approved or disapproved. NMFS retains the final authority to either approve or disapprove using conservation equivalency in place of the coastwide measures and publishes its determination in the final rule establishing the annual recreational measures for these fisheries.

If conservation equivalency is recommended, and following confirmation that the proposed state measures would achieve conservation equivalency, NMFS may waive the permit condition found at § 648.4(b), which requires federally permitted vessels to comply with the more restrictive management measures when state and Federal measures differ. Federally permitted charter/party permit holders and recreational vessels fishing for summer flounder in the EEZ then would be subject to the recreational fishing measures implemented by the state in which they land summer flounder, rather than the coastwide measures. In addition, the

Council and the Board must recommend precautionary default measures. The precautionary default measures would be assigned to any state that either does not submit a summer flounder management proposal to the Commission's Summer Flounder Technical Committee, or that submits measures that are determined not to achieve the required reduction. The precautionary default measures are defined as the set of measures that would achieve the greatest reduction in landings required for any state.

Under Framework 6, multi-state conservation equivalency measures for each region would be developed in the same manner as state-specific conservation equivalency measures, as specified in Framework 2. The procedures and timeline associated with development of summer flounder recreational management measures as determined in Framework 2 would also apply to multi-state conservation equivalency, i.e., with regard to distribution of multi-state conservation equivalency guidelines by the Commission to each state, distribution of multi-state conservation equivalency proposals to the Commission's Summer Flounder Technical Committee, evaluation of conservation equivalency proposals, and approval or disapproval of the proposals.

The recreational harvest limit for a multi-state region would be the sum of the harvest limits for all of the states volunteering to form that region. The Summer Flounder Technical Committee would develop region-specific tables as necessary for use by a multi-state region in determining recreational management measures expected to constrain recreational landings to the regional harvest limit. For the purpose of explanation, it should be assumed that a state or region makes its plans for the current calendar year at the beginning of the calendar year. To determine the multi-state conservation equivalency measures for a current year, the prior year's recreational landings would be pooled among the inclusive states and then compared to the current year's region-specific recreational harvest limit to determine if any reduction in landings would be required of that region. Each multi-state region would then craft their regulations under the same guidelines used to develop state-specific conservation equivalency measures and under the same timeline identified in Framework 2.

There are two possible scenarios for how states could proceed based on whether a region decides to maintain their voluntary regional agreement or decides to dissolve the voluntary multi-

state region and resume state-specific conservation equivalency. First, in the event that a multi-state region maintains its voluntary conservation equivalency agreement, the region would again compare its regional recreational landings for the prior year to the current year's region-specific recreational harvest limit to determine if any necessary reductions in landings would be required of that region. The region would then adjust their regulations such that the region-specific harvest limit would be achieved. Second, in the event the region dissolves its agreement and opts for state-specific conservation equivalency, state-specific harvest limits would apply and individual states would compare their state-specific landings for the prior year to the state-specific harvest limits in the current year. Each state would then adjust their regulations such that the state-specific harvest limits would be achieved. As established for individual states in Framework 2, a multi-state region that does not exceed its regional harvest limit in a given year may be allowed to set less restrictive management measures for the following year, if the following year's regional harvest limit is greater than the current year's regional landings.

NMFS proposes to expand the scope of the regulations at § 648.100(e) to allow states and/or multi-state regions to implement conservation equivalent recreational fishing measures. The conservation equivalency regulations at § 648.107 would continue to apply, i.e., references to "state" would not be modified, since individual states are ultimately responsible for implementation of the conservation equivalent regulations (including those approved for a multi-state region).

#### **Need for Clarification/Correction**

NMFS has identified the need to clarify and to correct the regulations regarding summer flounder commercial gear restrictions. This proposed rule would clarify (at § 648.104(b)) that, although the minimum mesh size requirements specified for otter trawls would not apply for a vessel issued a summer flounder small-mesh exemption letter, other restrictions in part 648 may limit the area in which the exemption letter may be used. This proposed rule would correct the reference to net stowage requirements at § 648.104(b)(1) to be § 648.104(e) rather than § 648.100(e) as it was inadvertently published in a final rule that consolidated regulations governing multiple marine fisheries of the Northeast region into one new CFR part (61 FR 34966, July 3, 1996).

In addition, NMFS proposes a non-substantive modification to the regulatory text at § 648.107(b) for clarification purposes.

#### Classification

NMFS has determined that the proposed rule is consistent with the FMP and preliminarily determined that the rule is consistent with the Magnuson-Stevens Fishery Conservation and Management Act and other applicable laws.

This proposed rule has been determined to be not significant for purposes of Executive Order 12866.

An IRFA was prepared, as required by section 603 of the Regulatory Flexibility Act (RFA). The IRFA describes the economic impact this proposed rule, if adopted, would have on small entities. A description of the action, why it is being considered, and the legal basis for this action are contained at the beginning of this section of the preamble and in the SUMMARY section of the preamble. A summary of the analysis follows. A copy of this analysis is available from the Council (see ADDRESSES).

This proposed rule does not duplicate, overlap, or conflict with other Federal rules.

The proposed action could affect any recreational angler who fishes for summer flounder in the EEZ or on a party/charter vessel issued a Federal permit for summer flounder. However, the IRFA focuses upon the impacts on party/charter vessels issued a Federal summer flounder permit because these vessels are considered small business entities for the purposes of the RFA, i.e., businesses with receipts (gross revenues) of up to \$6.5 million. These small entities can be specifically identified in the Federal vessel permit database and would be impacted by the recreational measures, regardless of whether they fish in Federal or state waters.

Data from the Northeast permit application database indicates that in 2004 there were 803 party/charter vessels permitted to take part in the summer flounder, scup, and/or black sea bass recreational fisheries in the EEZ. Of those 803 party/charter vessels, 56 held a summer flounder permit alone, and 683 held a summer flounder permit in combination with a scup permit, black sea bass permit, or both. However, only 284 of these vessels reported active participation in the recreational summer flounder fishery in 2004. Although individual recreational anglers may be impacted, they are not considered small entities under the RFA. Also, there is no permit

requirement to participate in these fisheries; thus, it would be difficult to quantify any impacts on recreational anglers in general.

In the EA/RIR/IRFA, the no-action alternative (i.e., maintenance of the regulations as codified) is defined as continuance of the state-specific conservation equivalency procedures as established in Framework 2. The implications of the no-action alternative are not substantial. State-specific summer flounder conservation equivalency, which was designed to constrain landings to the annual recreational harvest limit while allowing states the flexibility of determining their own recreational management measures, has been recommended by the Council and approved by NMFS each year since 2002.

The proposed action is not expected to result in negative impacts to a significant number of small entities participating in the recreational summer flounder fishery, relative to the status quo. The coastwide recreational harvest limit for summer flounder would not be altered. Multi-state conservation equivalency regions will develop fishing measures that maximize the harvest of the region-specific limit, without resulting in overages. This is similar to what is currently done on a state-specific basis when conservation equivalency is implemented, but on a larger scale. It is expected that the conservation equivalent recreational management measures would allow each state or multi-state region to develop specific summer flounder recreational measures that allow the fishery to operate during critical fishing periods, while still achieving conservation goals and mitigating potential adverse economic effects in specific states.

There are no new reporting or recordkeeping requirements contained in any of the alternatives considered for this action.

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

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: May 09, 2006.

**James W. Balsiger,**

*Acting Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.*

For the reasons stated in the preamble, 50 CFR part 648 is proposed to be 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 § 648.100, paragraphs (e)(2) introductory text, (e)(2)(i), and (e)(2)(ii) are revised to read as follows:

#### § 648.100 Catch quotas and other restrictions.

\* \* \* \* \*

(e) \* \* \*

(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 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 Marine Recreational Fisheries Statistics Survey (MRFSS) landings estimates by mode or area for that state are less than 30 percent.

(i) After review of the recommendations, the Regional Administrator will publish a proposed rule in the **Federal Register** on or about March 1 to implement the overall percent adjustment in recreational landings required for the fishing year, the Council and Commission's recommendation concerning conservation equivalency, the precautionary default measures, and coastwide measures.

(ii) During the public comment period on the proposed rule, the Commission will review conservation equivalency proposals and determine whether or not they achieve the necessary adjustment to recreational landings. The Commission 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.

\* \* \* \* \*

3. In § 648.104, paragraphs (b) introductory text and (b)(1) are revised to read as follows:

#### § 648.104 Gear restrictions.

\* \* \* \* \*

(b) *Exemptions.* Unless otherwise restricted by this part, the minimum mesh-size requirements specified in

paragraph (a)(1) of this section do not apply to:

(1) Vessels issued a summer flounder moratorium permit, a summer flounder small-mesh exemption area letter of authorization (LOA), required under paragraph (b)(1)(i) of this section, and fishing from November 1 through April 30 in the exemption area, which is east of the line that follows 72°30.0' W. long. until it intersects the outer boundary of the EEZ (copies of a map depicting the area are available upon request from the Regional Administrator). Vessels fishing under the LOA shall not fish west of the line. Vessels issued a permit under § 648.4(a)(3)(iii) may transit the area west or south of the line, if the vessel's fishing gear is stowed in a manner prescribed under § 648.104(e), so that it is not "available for immediate use" outside the exempted area. The Regional Administrator may terminate this exemption if he/she determines, after a review of sea sampling data, that vessels fishing under the exemption are discarding more than 10 percent, by weight, of their entire catch of summer flounder per trip. If the Regional Administrator makes such a determination, he/she shall publish notification in the **Federal Register** terminating the exemption for the remainder of the exemption season.

\* \* \* \* \*

4. In § 648.107, paragraph (b) is revised to read as follows:

**§ 648.107 Conservation equivalent measures for the summer flounder fishery.**

\* \* \* \* \*

(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 - January 1 through December 31; minimum size - 18 inches (45.7 cm); and possession limit - one fish.

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**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

**50 CFR Part 679**

[I.D. 050306E]

RIN 0648-AT71

**Fisheries of the Exclusive Economic Zone Off Alaska; Allocating Gulf of Alaska Fishery Resources**

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

**ACTION:** Availability of fishery management plan amendment; request for comments.

**SUMMARY:** NMFS manages Gulf of Alaska (GOA) groundfish fisheries through the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). Congress granted NMFS specific regulatory authority to manage Central GOA rockfish fisheries in the Consolidated Appropriations Act of 2004. Congress provided additional guidance to the North Pacific Fishery Management Council (Council) in the development of a program to allocate harvesting privileges to fishermen and permit a defined group of processors to form associations with these harvesters for the exclusive use of specific rockfish and other groundfish in the Central GOA.

The Council adopted Amendment 68 in June 2005. Amendment 68 to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) would establish a program to allocate Central GOA groundfish resources among harvesters and processors (Program). Amendment 68 would modify the FMP to increase resource conservation, improve economic efficiency, and improve safety in the Central GOA rockfish fisheries and other fisheries that are subject to the Program. This action is intended to promote the goals and objectives of the Magnuson-Stevens Act, the FMP, and other applicable laws.

**DATES:** Comments on the amendment must be received on or before July 14, 2006.

**ADDRESSES:** Send comments to Sue Salvesson, Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region, NMFS, Attn: Ellen Walsh. Comments may be submitted by:

• Mail: P.O. Box 21668, Juneau, AK 99802.

• Hand Delivery to the Federal Building; 709 West 9th Street, Room 420A, Juneau, AK.

• Facsimile: 907-586-7557.

• E-mail: 0648-AT71-GOA68-

NOA@noaa.gov. Include in the subject line of the e-mail the following document identifier: "Central GOA Rockfish RIN 0648-AT71." E-mail comments, with or without attachments, are limited to 5 megabytes.

• Webform at the Federal eRulemaking Portal: [www.regulations.gov](http://www.regulations.gov). Follow the instructions at that site for submitting comments.

Copies of Amendment 68 and the Environmental Assessment/Regulatory Impact Review/Initial Regulatory Flexibility Analysis (EA/RIR/IRFA) for this action may be obtained from the NMFS Alaska Region at the address above or from the Alaska Region website at <http://www.fakr.noaa.gov/sustainablefisheries.htm>.

**FOR FURTHER INFORMATION CONTACT:**

Glenn Merrill, 907-586-7228 or [glenn.merrill@noaa.gov](mailto:glenn.merrill@noaa.gov).

**SUPPLEMENTARY INFORMATION:** The Magnuson-Stevens Act requires that each regional fishery management council submit any FMP amendment it prepares to NMFS for review and approval, disapproval, or partial approval by the Secretary. The Magnuson-Stevens Act also requires that NMFS, upon receiving an FMP amendment, immediately publish a notice in the **Federal Register** announcing that the amendment is available for public review and comment.

The Council submitted Amendment 68 to the FMP for Secretarial review, which would implement the Program designed to meet the requirements of Section 802 of the Consolidated Appropriations Act of 2004 (Public Law 108-199). Section 802 states:

SEC. 802. GULF OF ALASKA ROCKFISH DEMONSTRATION PROGRAM.

The Secretary of Commerce, in consultation with the North Pacific Fishery Management Council, shall establish a pilot program that recognizes the historic participation of fishing vessels (1996 to 2002, best 5 of 7 years) and historic participation of fish processors (1996 to 2000, best 4 of 5 years) for Pacific ocean perch, northern rockfish, and pelagic shelf rockfish harvested in Central Gulf of Alaska. Such a pilot program shall (1) provide for a set-aside of up to 5 percent for the total allowable catch of such fisheries for catcher vessels not eligible to participate in the pilot program, which shall be delivered to shore-based fish processors not eligible to participate in the pilot program; (2) establish catch limits for non rockfish species and non-target rockfish species currently harvested with Pacific