

TABLE 52.1031.—EPA-APPROVED RULES AND REGULATIONS

State citation	Title/subject	Date adopted by State	Date approved by EPA	Federal Register citation	52.1020
100	Definitions	12/1/2005	11/21/07	[Insert Federal Register page number where the document begins].	(c)(62) ..... Revised to add definitions associated with SIP submittals made between 7/19/95 and 12/1/05.
137	Emission State-ments.	12/17/04	11/21/07	[Insert Federal Register page number where the document begins].	(c)(62) ..... Revised to incorporate changes required by EPA's consolidated emissions reporting rule. The entire rule is approved with the exception of HAP and greenhouse gas reporting requirements which were not included in the state's SIP revision request.

**Note 1.** The regulations are effective statewide unless stated otherwise in comments or title section.

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**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

**50 CFR Part 648**

[Docket No. 070827484-7581-02]

RIN 0648-AV99

**Fisheries of the Northeastern United States; Recreational Management Measures for the Summer Flounder Fishery; Fishing Year 2008**

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

**ACTION:** Final rule.

**SUMMARY:** Through this final rule, NMFS is implementing coastwide summer flounder recreational management measures to complete the rulemaking process initiated in March 2007. This action is necessary to implement appropriate coastwide management measures to be in place on January 1, 2008, following the expiration of the current state-by-state conservation equivalency management measures on December 31, 2007. The intent of these measures is to prevent overfishing of the summer flounder resource during the interim between the aforementioned expiration of the 2007 recreational measures and the implementation of measures for 2008.

**DATES:** Effective 0001 hours, Eastern Standard Time (EST), January 1, 2008.

**ADDRESSES:** Copies of the Supplemental Environmental Assessment, as well as

the original Environmental Assessment, Regulatory Impact Review, and Initial Regulatory Flexibility Analysis (EA/RIR/IRFA) completed for the 2007 recreational management measures are available from Patricia A. Kurkul, Regional Administrator, NMFS Northeast Region, 1 Blackburn Drive, Gloucester, MA 01930-2298. The Supplemental Environmental Assessment is also accessible via the Internet at <http://www.nero.noaa.gov>.

**FOR FURTHER INFORMATION CONTACT:**

Michael P. Ruccio, Fishery Policy Analyst, (978) 281-9104.

**SUPPLEMENTARY INFORMATION:** The summer flounder recreational fishery is managed cooperatively under the provisions of the Summer Flounder, Scup, and Black Sea Bass Fishery Management Plan (FMP) by the Mid-Atlantic Fishery Management Council (Council) and the Atlantic States Marine Fisheries Commission (Commission), in consultation with the New England and South Atlantic Fishery Management Councils. The Council prepared the FMP under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevenson Act), 16 U.S.C. 1801 *et seq.* Regulations implementing the FMP appear at 50 CFR part 648, with subparts A (general provisions) and G (summer flounder) pertaining to the summer flounder fishery. General regulations governing U.S. fisheries also appear at 50 CFR part 600. States manage summer flounder within 3 nautical 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 exclusive economic zone (EEZ), as well as vessels possessing a

Federal fisheries permit, regardless of where they fish.

Under the FMP and regulations, the Council may recommend and NMFS may approve one of two approaches for managing the summer flounder recreational fishery: Conservation equivalency (either state-by-state or regional) with a precautionary default backstop approved by NMFS; or coastwide management measures. The FMP requires that the Council review updated assessment and fishery information on an annual basis and recommend to NMFS both a Total Allowable Landings (TAL) and recreational management measures.

For the 2007 recreational fishery, the Council recommended and NMFS approved state-by-state conservation equivalency. When the conservation equivalency measures expire at the end of a fishing year, coastwide measures found at §§ 648.103(a) and 648.105(a) become effective. Typically, the coastwide measures are adjusted during the annual rulemaking process that establishes recreational management measures to ensure that the coastwide measures are sufficient to constrain recreational landings to the established harvest limit. This is done even if conservation equivalency is implemented, as was done for 2007, because the coastwide measures serve as the interim measures in place in the following year (i.e., 2008) until new measures are put in place. This is typically completed by late spring or early summer. However, because of timing issues that arose from the reauthorization of the Magnuson-Stevens Act that granted authority to extend the summer flounder rebuilding period, and a subsequent increase to the 2007 TAL, NMFS did not implement

any revised 2007 coastwide measures to serve as the 2008 regulatory backstop after conservation equivalency expires. Prior to this rule, the coastwide measures in the regulations were a 4–fish possession limit, a 17–inch (43.18–cm) minimum fish size, and no closed season. These measures were determined to be insufficient to ensure that the 2007 recreational harvest limit would not be exceeded. Additional detail on the background and development of the 2007 recreational management measures and the 2008 coastwide interim management measures are contained in the preamble of the respective proposed rules (72 FR 12158; March 15, 2007, and 72 FR 55166; September 28, 2007) and are not repeated here.

This action is necessary to complete the final detail of the 2007 summer flounder recreational management measures rulemaking and should not be confused with the upcoming process to develop the 2008 recreational management measures. The Council will begin development of the 2008 recreational management measures, based on updated assessment information and 2007 fishery information, through its Monitoring Committee meeting in November 2007. The Council will consider the Monitoring Committee's recommendations for 2008 management measures during its December 2007 meeting in Secaucus, NJ.

A proposed rule to implement summer flounder coastwide recreational interim management measures of an 18.5–inch (46.99–cm) minimum fish size, a 4–fish possession limit, and a year-round season was published in the **Federal Register** on September 28, 2007 (72 FR 55166), with public comment accepted through October 15, 2007. This final rule implements the interim summer flounder coastwide management measures proposed by NMFS, as presented in the proposed rule and outlined as follows.

The Commission's Technical Committee (TC) conducted analysis that indicated an 18.5–inch (46.99–cm) minimum fish size with a 4–fish possession limit and a year-round season would constrain landings to 90 percent of the emergency rule increased harvest limit (2,181,735 fish). By implementing these measures, the normal regulatory process that occurs when conservation equivalency is utilized to manage the summer flounder recreational fishery will be completed. These measures will replace the existing coastwide measures regulatory language of a 17–inch (43.18–cm) minimum fish size, a 4–fish possession limit, and no

closed season, and serve as the default management measures in place on January 1, 2008, after conservation equivalent measures have expired. These new coastwide measures will remain effective until they are either superseded by conservation equivalency measures or revised, as needed, to ensure that the 2008 recreational harvest limit will not be exceeded.

These measures are sufficiently risk averse as interim measures to ensure that overfishing will not occur while new measures, based on the updated 2007 stock assessment, are developed for implementation in mid–2008. Summer flounder are typically found offshore during colder winter months and only limited recreational fisheries occur in the southern range of the stock during spring. Marine Recreational Fisheries Statistical Survey (MRFSS) data from 2001–2006 show that less than 2 percent of the annual harvest occurs in the first two MRFSS data collection periods (called waves) of the year (January–April). Approximately 31 percent of the coastwide summer flounder harvest occurs in Wave 3 (May–June).

Based on recent years' development and rulemaking schedules when conservation equivalency has been utilized for summer flounder recreational management measures, it is expected that updated measures, based on 2007 recreational landings and adjusted for any quota overages, would be in place before Wave 4 (July–August) and the bulk of summer flounder recreational fisheries begin in 2008. If different coastwide measures are recommended by the Council and Commission and implemented by NMFS for 2008 management, it is expected that those measures would be in place during Wave 2 (March–April 2008).

#### Comments and Responses

Three comments were received regarding the proposed 2008 interim coastwide recreational management measures. Two of the comments received did not address any aspect of the proposed 2008 interim coastwide recreational management measures: One stated that summer flounder quotas should be reduced in 2008, and the other expressed general displeasure with recreational fishing opportunities. NMFS anticipates publishing a proposed rule for the 2008 summer flounder TAL before December 2007. That proposed rule, when published, would be the appropriate rule to address comments on quota reductions, therefore those two comments are not addressed here.

*Comment 1:* The commenter inquired why a coastwide measure would be implemented that may penalize states that have used conservation equivalency measures as an effective means of constraining recreational harvests to or below the state's respective target.

*Response:* This commenter appears to have confused the 2008 interim coastwide management measures with the yet to be developed 2008 management measures. As previously stated in the preamble to this final rule, the measures implemented by this rule will remain effective until replaced, by either conservation equivalency or updated coastwide measures, sometime in late spring or early summer of 2008. Coastwide measures have always become the management measures in place in the interim between the expiration of conservation equivalency and the implementation of new measures that are based on updated assessment and fishery information. The measures of this rule are necessary to ensure that the relatively minor amount of summer flounder recreational harvest that occurs in late winter will be adequately constrained by appropriate measures. The Council has not yet initiated the process that will develop the measures that will be utilized to manage the bulk of the 2008 recreational fisheries that occur during summer and fall. The Council may consider both state-by-state or regional conservation equivalency or modification of the coastwide measures to manage the 2008 summer flounder recreational fishery.

#### Classification

The Administrator, Northeast Region, NMFS, determined that this final rule is necessary for the conservation and management of the summer flounder fishery and that it is consistent with the Magnuson-Stevens Fishery Conservation and Management Act and other applicable law.

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

A final regulatory flexibility analysis (FRFA) was prepared. The FRFA incorporates the IRFA, a summary of the significant issues raised by the public comments in response to the IRFA, and NMFS responses to those comments, and a summary of the analyses completed to support the action. A copy of this analysis is available from the NMFS (see **ADDRESSES**).

#### Final Regulatory Flexibility Analysis

##### *Statement of Objective and Need*

A description of the reasons why this action is being taken, and the objectives

of and legal basis for this final rule are explained in the preambles to the proposed rule and this final rule and are not repeated here.

*Summary of Significant Issues Raised in Public Comments*

A summary of the comments received, and the responses thereto, are contained in the “Comments and Responses” section of this preamble. No significant issues were raised by those submitting comments, therefore; no changes to the proposed rule were required to be made as a result of the public comments.

*Description and Estimate of Number of Small Entities to Which This Rule Will Apply*

The proposed measures could affect any of the 967 vessels possessing a Federal charter/party permit for summer flounder in 2006, the most recent year for which complete permit data are available. However, only 331 of these vessels reported active participation in the recreational summer flounder fishery in 2006.

*Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements*

No additional reporting, recordkeeping, or other compliance requirements are included in this final rule.

*Description of the Steps Taken to Minimize Economic Impact on Small Entities*

NMFS undertook this additional recreational management measure rulemaking to implement interim coastwide measures that are designed to constrain recreational harvest to the 2007 recreational harvest limit as increased by emergency rule on January 19, 2007 (72 FR 2458), and extended for the remainder of 2007 (72 FR 40077; July 23, 2007). The need to develop and implement these measures resulted from public comments received on the 2007 recreational management measures proposed rule (72 FR 12158; March 15, 2007) that indicated the originally proposed measures (Alternative 2) for a 1–fish possession limit, a 19–inch (48.26–cm) minimum fish size, and no closed season would be severely restrictive following the implementation of the increased 2007 TAL.

During the 2007 recreational management measures rulemaking, NMFS ultimately implemented a final rule (72 FR 30492; June 1, 2007) to implement state-by-state conservation equivalency to manage the 2007 summer flounder recreational fishery. This rendered the coastwide measures

moot for 2007; however, the coastwide measures are necessary as the interim management measures for the first third of 2008, after conservation equivalency has expired but before updated measures are developed and recommended for implementation by the Council. Recreational harvest data indicate that only a small percentage of the summer flounder fishery is likely to occur during the interim recreational management measures effective period. However, the Alternative 2 coastwide measure available to NMFS during the recreational management measure rulemaking development was, as the public indicated, highly restrictive under the higher 17.112–million-lb (7,762–mt) TAL implemented and extended by emergency rule. Alternative 2 had been developed and analyzed to constrain landings to the recreational harvest limit resulting from the lower, pre-emergency TAL of 12.983 million lb (5,889 mt). NMFS indicated in the 2007 recreational management measures final rule that it would undertake separate notice-and-comment rulemaking to propose and implement coastwide measures for the interim period of 2008 that were analyzed for effectiveness relative to the final, higher 2007 TAL.

The 18.5–inch (46.99–cm) minimum fish size with a 4–fish possession limit and a year-round season (Alternative 3) implemented by this rule minimizes, to the extent possible, the economic impact on small entities while ensuring that the mortality objectives of the FMP and summer flounder rebuilding program will be met in the first third of 2008. The Council-proposed coastwide management measures of Alternative 2 (a 1–fish possession limit, a 19–inch (48.26–cm) minimum fish size, and no closed season) would have been unduly restrictive, constraining recreational harvest to an estimated 55 percent of the 2007 recreational harvest limit resulting from the emergency rule increased TAL. By contrast, the measures implemented by this rule are projected to constrain the recreational harvest to 90 percent of the increased TAL. The increased number of fish available for landing under Alternative 3 results in a lower impact to small entities that participate in the early season fishery by allowing slightly larger fish to be retained. The previous coastwide management measures in regulation (Alternative 1) for a 4–fish possession limit, a 17–inch (43.18–cm) minimum fish size, and no closed season was projected not to constrain recreational harvest to the 2007 recreational harvest limit. Therefore, the measures implemented by this rule are the only alternative that

minimizes economic impacts by allowing the maximum potential harvest, to the extent practicable, yet achieves the biological objectives of the FMP.

*Small Entity Compliance Guide*

Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996 states that, for each rule or group of related rules for which an agency is required to prepare a FRFA, the agency shall publish one or more guides to assist small entities in complying with the rule, and shall designate such publications as “small entity compliance guides.” The agency shall explain the actions a small entity is required to take to comply with a rule or group of rules. As part of this rulemaking process, a letter to permit holders that also serves as the small entity compliance guide was prepared and will be sent to all holders of Federal party/charter permits issued for the summer flounder, scup, and black sea bass fisheries. In addition, copies of this final rule and the small entity compliance guide are available from NMFS (see ADDRESSES) and at the following Web site: <http://www.nero.noaa.gov>.

Dated: November 14, 2007.

**Samuel D. Rauch III,**  
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 § 648.103, paragraph (b) is revised to read as follows:

**§ 648.103 Minimum fish sizes.**

\* \* \* \* \*

(b) Unless otherwise specified pursuant to § 648.107, the minimum size for summer flounder is 18.5 inches (46.99 cm) TL for all vessels that do not qualify for a moratorium permit, and charter boats holding a moratorium permit if fishing with more than three crew members, or party boats holding a moratorium permit if fishing with passengers for hire or carrying more than five crew members.

\* \* \* \* \*

■ 3. In § 648.105, the first sentence of paragraph (a) is revised to read as follows:

**§ 648.105 Possession restrictions.**

\* \* \* \* \*

(a) Unless otherwise specified pursuant to § 648.107, no person shall possess more than four summer

flounder in, or harvested from, the EEZ, 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. \* \* \*

\* \* \* \* \*

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