

(iii) Whether there is an immediate need to protect the resource or to impose management measures to resolve gear conflicts; and

(iv) Whether there will be a continuing evaluation of management measures adopted following their implementation as a final rule.

(4) *Action by NMFS.* If the Councils' recommendation to NMFS includes adjustments or additions to management measures and:

(i) If NMFS concurs with the Councils' recommended management measures and determines that the recommended management measures should be issued as a final rule based on the factors specified in paragraph (c)(3) of this section, then the measures shall be issued as a final rule in the FEDERAL REGISTER.

(ii) If NMFS concurs with the Councils' recommendation and determines that the recommended management measures should be published first as a proposed rule, then the measures shall be published as a proposed rule in the FEDERAL REGISTER. After additional public comment, if NMFS concurs with the Councils' recommendation, then the measures shall be issued as a final rule in the FEDERAL REGISTER.

(iii) If NMFS does not concur, then the Councils shall be notified in writing of the reasons for the non-concurrence.

(d) *Emergency action.* Nothing in this section is meant to derogate from the authority of the Secretary to take emergency action under section 305(c) of the Magnuson-Stevens Act.

[64 FR 54751, Oct. 7, 1999]

Subpart G—Management Measures for the Summer Flounder Fisheries

§ 648.100 Catch quotas and other restrictions.

(a) *Annual review.* The Summer Flounder Monitoring Committee shall review the following data on or before August 15 of each year to determine the allowable levels of fishing and other restrictions necessary to achieve, with at least a 50-percent probability of success, a fishing mortality rate (F) that produces the maximum yield per

recruit (Fmax): Commercial, recreational, and research catch data; current estimates of fishing mortality; stock status; recent estimates of recruitment; virtual population analysis results; levels of noncompliance by fishermen or individual states; impact of size/mesh regulations; sea sampling and winter trawl survey data or, if sea sampling data are unavailable, length frequency information from the winter trawl survey and mesh selectivity analyses; impact of gear other than otter trawls on the mortality of summer flounder; and any other relevant information.

(b) *Recommended measures.* Based on this review and requests for research quota as described in paragraph (f) of this section, the Summer Flounder Monitoring Committee shall recommend to the Demersal Species Committee of the MAFMC and the Commission the following measures to ensure, with at least a 50-percent probability of success, that the F specified in paragraph (a) of this section will not be exceeded:

(1) Research quota set from a range of 0 to 3 percent of the maximum allowed to achieve the specified F.

(2) Commercial quota set from a range of 0 to the maximum allowed to achieve the specified F, set after reductions for research quota.

(3) Commercial minimum fish size.

(4) Minimum mesh size.

(5) Recreational possession limit set from a range of 0 to 15 summer flounder to achieve the specified F, set after reductions for research quota.

(6) Recreational minimum fish size.

(7) Recreational season.

(8) Recreational state conservation equivalent and precautionary default measures utilizing possession limits, minimum fish sizes, and/or seasons set after reductions for research quota.

(9) Restrictions on gear other than otter trawls.

(10) Adjustments to the exempted area boundary and season specified in § 648.104(b)(1) by 30-minute intervals of latitude and longitude and 2-week intervals, respectively, based on data specified in paragraph (a) of this section, to prevent discarding of sublegal sized summer flounder in excess of 10 percent, by weight.

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(c) *Annual fishing measures.* The Demersal Species Committee shall review the recommendations of the Summer Flounder Monitoring Committee. Based on these recommendations and any public comment, the Demersal Species Committee shall recommend to the MAFMC measures necessary to ensure, with at least a 50-percent probability of success, that the applicable specified F will not be exceeded. The MAFMC shall review these recommendations and, based on the recommendations and any public comment, recommend to the Regional Administrator measures necessary to ensure, with at least a 50-percent probability of success, that the applicable specified F will not be exceeded. The MAFMC's recommendations must include supporting documentation, as appropriate, concerning the environmental and economic impacts of the recommendations. The Regional Administrator shall review these recommendations and any recommendations of the Commission.

(d) *Commercial measures.* After such review, the Regional Administrator will publish a proposed rule in the FEDERAL REGISTER to implement a coastwide commercial quota, a recreational harvest limit, and additional management measures for the commercial fishery. After considering public comment, NMFS will publish a final rule in the FEDERAL REGISTER to implement the measures necessary to ensure, with at least a 50-percent probability of success, that the applicable specified F will not be exceeded.

(1) *Distribution of annual quota.* (i) The annual commercial quota will be distributed to the states, based upon the following percentages:

ANNUAL COMMERCIAL QUOTA SHARES	
State	Share (percent)
Maine	0.04756
New Hampshire	0.00046
Massachusetts	6.82046
Rhode Island	15.68298
Connecticut	2.25708
New York	7.64699
New Jersey	16.72499
Delaware	0.01779
Maryland	2.03910
Virginia	21.31676
North Carolina	27.44584

(ii) All summer flounder landed for sale in a state shall be applied against that state's annual commercial quota, regardless of where the summer flounder were harvested. Any landings in excess of the commercial quota in any state will be deducted from that state's annual quota for the following year in the final rule that establishes the annual state-by-state quotas. The overage deduction will be based on landings for the current year through October 31, and on landings for the previous calendar year that were not included when the overage deduction was made in the final rule that established the annual quota for the current year. If the Regional Administrator determines during the fishing year that any part of an overage deduction was based on erroneous landings data that were in excess of actual landings for the period concerned, he/she will restore the overage that was deducted in error to the appropriate quota allocation. The Regional Administrator will publish a notice in the FEDERAL REGISTER announcing such restoration.

(2) *Quota transfers and combinations.* Any state implementing a state commercial quota for summer flounder may request approval from the Regional Administrator to transfer part or all of its annual quota to one or more states. Two or more states implementing a state commercial quota for summer flounder may request approval from the Regional Administrator to combine their quotas, or part of their quotas, into an overall regional quota. Requests for transfer or combination of commercial quotas for summer flounder must be made by individual or joint letter(s) signed by the principal state official with marine fishery management responsibility and expertise, or his/her previously named designee, for each state involved. The letter(s) must certify that all pertinent state requirements have been met and identify the states involved and the amount of quota to be transferred or combined.

(3) Within 10 working days following the receipt of the letter(s) from the states involved, the Regional Administrator shall notify the appropriate state officials of the disposition of the request. In evaluating requests to transfer a quota or combine quotas, the

Regional Administrator shall consider whether:

(i) The transfer or combination would preclude the overall annual quota from being fully harvested.

(ii) The transfer addresses an unforeseen variation or contingency in the fishery.

(iii) The transfer is consistent with the objectives of the Summer Flounder FMP and Magnuson-Stevens Act.

(4) The transfer of quota or the combination of quotas will be valid only for the calendar year for which the request was made and will be effective upon the filing by NMFS of a notice of the approval of the transfer or combination with the Office of the Federal Register.

(5) A state may not submit a request to transfer quota or combine quotas if a request to which it is party is pending before the Regional Administrator. A state may submit a new request when it receives notice that the Regional Administrator has disapproved the previous request or when notice of the approval of the transfer or combination has been filed at the Office of the Federal Register.

(6) If there is a quota overage among states involved in the combination of quotas at the end of the fishing year, the overage will be deducted from the following year's quota for each of the states involved in the combined quota. The deduction will be proportional, based on each state's relative share of the combined quota for the previous year. A transfer of quota or combination of quotas does not alter any state's percentage share of the overall quota specified in paragraph (d)(1)(i) of this section.

(e) *Recreational measures.* The Demersal Species Committee shall review the recommendations of the Summer Flounder Monitoring Committee. Based on these recommendations and any public comment, the Demersal Species Committee shall recommend to the MAFMC and Commission measures necessary to ensure, with at least a 50-percent probability of success, that the applicable specified F will not be exceeded. The MAFMC shall review these recommendations and, based on the recommendations and any public comment, recommend to the Regional Administrator measures necessary to en-

sure, with at least a 50-percent probability of success, that the applicable specified F will not be exceeded. The MAFMC's recommendations must include supporting documentation, as appropriate, concerning the environmental and economic impacts of the recommendations. The Council and the Commission will recommend that the Regional Administrator implement either:

(1) *Coastwide measures.* Annual coastwide management measures that constrain the recreational summer flounder fishery to the recreational harvest limit, or

(2) *Conservation equivalent measures.* States 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 may implement measures by mode or area only if the proportional standard error of Marine Recreational Statistical Survey 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 state conservation equivalency, the precautionary default measures, and coastwide measures.

(ii) During the public comment period on the proposed rule, the Commission will review state 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 conservation measures for the approved state proposals, and in the case of disapproved state proposals, the precautionary default measures.

(iii) The Commission may allow states assigned the precautionary default measures to resubmit revised management measures. The Commission will detail the procedures by which the state can develop alternate measures. The Commission will notify

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the Regional Administrator of any re-submitted state proposals approved subsequent to publication of the final rule and the Regional Administrator will publish a notice in the FEDERAL REGISTER to notify the public.

(iv) After considering public comment, the Regional Administrator will publish a final rule in the FEDERAL REGISTER to implement either the state specific conservation equivalency measures or coastwide measures to ensure that the applicable specified target is not exceeded.

(f) *Research quota.* See § 648.21(g).

[66 FR 36211, July 11, 2001, as amended at 66 FR 42160, Aug. 10, 2001; 67 FR 6880, Feb. 14, 2002; 67 FR 50372, Aug. 2, 2002]

§ 648.101 Closures.

(a) *EEZ closure.* The Regional Administrator shall close the EEZ to fishing for summer flounder by commercial vessels for the remainder of the calendar year by publishing notification in the FEDERAL REGISTER if he/she determines that the inaction of one or more states will cause the applicable F specified in § 648.100(a) to be exceeded, or if the commercial fisheries in all states have been closed. The Regional Administrator may reopen the EEZ if earlier inaction by a state has been remedied by that state, or if commercial fisheries in one or more states have been reopened without causing the applicable specified F to be exceeded.

(b) *State quotas.* The Regional Administrator will monitor state commercial quotas based on dealer reports and other available information and shall determine the date when a state commercial quota will be harvested. The Regional Administrator shall publish notification in the FEDERAL REGISTER advising a state that, effective upon a specific date, its commercial quota has been harvested and notifying vessel and dealer permit holders that no commercial quota is available for landing summer flounder in that state.

§ 648.102 Time restrictions.

Unless otherwise specified pursuant to § 648.107, vessels that are not eligible for a moratorium permit under § 648.4(a)(3) and fishermen subject to the possession limit may fish for sum-

mer flounder from January 1 through December 31. This time period may be adjusted pursuant to the procedures in § 648.100.

[67 FR 50372, Aug. 2, 2002]

§ 648.103 Minimum fish sizes.

(a) The minimum size for summer 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) Unless otherwise specified pursuant to § 648.107, the minimum size for summer flounder is 17 inches (43.2 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.

(c) The minimum sizes 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 possessing valid state permits authorizing filleting at sea may possess fillets smaller than the size specified if all state requirements are met.

[61 FR 34968, July 3, 1996, as amended at 62 FR 10478, Mar. 7, 1997; 62 FR 37157, July 11, 1997; 62 FR 63875, Dec. 3, 1997; 63 FR 27868, May 21, 1998; 66 FR 39291, July 30, 2001; 67 FR 50372, Aug. 2, 2002]

§ 648.104 Gear restrictions.

(a) *General.* (1) Otter trawlers whose owners are issued a summer flounder permit and that land or possess 100 or more lb (45.4 or more kg) of summer flounder from May 1 through October 31, or 200 lb or more (90.8 kg or more) of summer flounder from November 1 through April 30, per trip, must fish with nets that have a minimum mesh size of 5.5-inch (14.0-cm) diamond or 6.0-inch (15.2-cm) square mesh applied throughout the body, extension(s), and codend portion of the net.

(2) Mesh sizes are measured by a wedge-shaped gauge having a taper of 2 cm in 8 cm and a thickness of 2.3 mm