

**DATES:** This rule is effective 12:01 a.m., local time, December 19, 2012, until 12:01 a.m., local time, January 1, 2013.

**FOR FURTHER INFORMATION CONTACT:** Catherine Hayslip, telephone: 727-824-5305, email: [Catherine.Hayslip@noaa.gov](mailto:Catherine.Hayslip@noaa.gov).

**SUPPLEMENTARY INFORMATION:** The dolphin and wahoo fishery off the Atlantic states is managed under the Fishery Management Plan for the Dolphin and Wahoo Fishery of the Atlantic (FMP). The FMP was prepared by the South Atlantic Fishery Management Council, in cooperation with the Mid-Atlantic and New England Fishery Management Councils, and is implemented under the authority of the Magnuson-Stevens Fishery Conservation and Management Act by regulations at 50 CFR part 622.

### Background

The commercial ACL for wahoo is 64,147 lb (29,097 kg), round weight, as specified in 50 CFR 622.49(f)(1).

The AMs for wahoo, specified at 50 CFR 622.49(f)(1), require NMFS to close the commercial sector for wahoo when the commercial ACL for wahoo has been reached, or is projected to be reached, by filing a notification to that effect with the Office of the **Federal Register**. NMFS has determined that the commercial ACL for Atlantic wahoo has been met. Accordingly, the commercial sector for wahoo in the EEZ off the Atlantic states (Maine through the east coast of Florida) is closed effective 12:01 a.m., local time, December 19, 2012, until 12:01 a.m., local time, January 1, 2013.

The operator of a vessel with a valid commercial vessel permit for Atlantic dolphin and wahoo having wahoo onboard must have landed and bartered, traded, or sold such wahoo prior to 12:01 a.m., local time, December 19, 2012. During this commercial closure, the bag and possession limit specified in 50 CFR 622.39(f) applies to all harvest or possession of wahoo in or from the Atlantic EEZ, and the sale or purchase of wahoo taken from the EEZ is prohibited. The prohibition on sale or purchase does not apply to the sale or purchase of wahoo that were harvested, landed ashore, and sold prior to 12:01 a.m., local time, December 19, 2012, and were held in cold storage by a dealer or processor.

### Classification

The Regional Administrator, Southeast Region, NMFS, has determined this temporary rule is necessary for the conservation and management of wahoo off the Atlantic

states and is consistent with the Magnuson-Stevens Act and other applicable laws.

This action is taken under 50 CFR 622.49(f)(1) and is exempt from review under Executive Order 12866.

These measures are exempt from the procedures of the Regulatory Flexibility Act because the temporary rule is issued without opportunity for prior notice and comment.

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA, (AA), finds that the need to immediately implement this action to close the commercial sector for wahoo constitutes good cause to waive the requirements to provide prior notice and opportunity for public comment pursuant to the authority set forth in 5 U.S.C. 553(b)(B), as such procedures would be unnecessary and contrary to the public interest. Such procedures would be unnecessary because the rule that implemented the Atlantic wahoo ACL and AMs has been subject to notice and comment (77 FR 15916, March 16, 2010), and all that remains is to notify the public of the closure. Allowing prior notice and opportunity for public comment is contrary to the public interest because of the need to immediately implement this action to protect the wahoo resource. The capacity of the fishing fleet allows for rapid harvest of the ACL and prior notice and opportunity for public comment would require time and would potentially result in a harvest well in excess of the established commercial ACL.

For the aforementioned reasons, the AA also finds good cause to waive the 30-day delay in the effectiveness of this action under 5 U.S.C. 553(d)(3).

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

Dated: December 11, 2012.

**James P. Burgess,**

*Acting Deputy Director, Office of Sustainable Fisheries, National Marine Fisheries Service.*

[FR Doc. 2012-30218 Filed 12-11-12; 4:15 pm]

**BILLING CODE 3510-22-P**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 648

[Docket No. 111220786-1781-01]

RIN 0648-XC391

### Fisheries of the Northeastern United States; Summer Flounder Fishery; Commercial Quota Available for the State of New York To Reopen Fishery

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

**ACTION:** Temporary rule.

**SUMMARY:** NMFS announces that the 2012 summer flounder commercial fishery in the State of New York will be reopened to provide the opportunity for the fishery to fully harvest the available quota. Vessels issued a commercial Federal fisheries permit for the summer flounder fishery may land summer flounder in New York until the quota is fully harvested. Regulations governing the summer flounder fishery require publication of this notification to advise New York that quota remains available and the summer flounder fishery is open to vessel permit holders for landing summer flounder in New York and to inform dealer permit holders in New York that they may purchase summer flounder.

**DATES:** Effective at 0001 hr local time, December 12, 2012, through 2400 hr local time December 31, 2012.

**FOR FURTHER INFORMATION CONTACT:** Carly Bari, (978) 281-9224, or [Carly.Bari@noaa.gov](mailto:Carly.Bari@noaa.gov).

**SUPPLEMENTARY INFORMATION:** Regulations governing the summer flounder fishery are found at 50 CFR part 648. The regulations require annual specification of a commercial quota that is apportioned on a percentage basis among the coastal states from North Carolina through Maine. The process to set the annual commercial quota and the percent allocated to each state is described in § 648.102.

The initial total commercial quota for summer flounder for the 2012 fishing year is 13,136,001 lb (5,958,490 kg) (76 FR 82189, December 30, 2011). The percent allocated to vessels landing summer flounder in New York is 7.64699 percent, resulting in a commercial quota of 1,004,509 lb (455,645 kg). The 2012 allocation was reduced to 922,705 lb (418,539 kg) after deduction of research set-aside and

adjustment for quota overages carried forward from 2011. However, NMFS determined on December 5, 2012, that this quota allocation was incorrect due to an error in determining the 2012 commercial summer flounder quota. The correct 2012 allocation to New York is 953,773 lb (432,624 kg).

The Administrator, Northeast Region, NMFS (Regional Administrator), monitors the state commercial quotas and has determined that, due to the error, there is commercial summer flounder quota available for harvest in New York. NMFS is required to publish notification in the **Federal Register** to

reopen the fishery, advising and notifying commercial vessels and dealer permit holders that, effective upon a specific date, there is commercial quota available for landing summer flounder in that state.

Therefore, effective 0001 hours, December 12, 2012, vessels holding summer flounder commercial Federal fisheries permits can land summer flounder in New York until the corrected commercial state quota is fully harvested. Effective 0001 hours December 12, 2012, federally permitted dealers can also purchase summer flounder from federally permitted

vessels that land in New York until the corrected commercial state quota is fully harvested.

#### **Classification**

This action is required by 50 CFR part 648 and is exempt from review under Executive Order 12866.

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

Dated: December 10, 2012.

**Lindsay Fullenkamp,**

*Acting Deputy Director, Office of Sustainable Fisheries, National Marine Fisheries Service.*

[FR Doc. 2012-30216 Filed 12-11-12; 4:15 pm]

**BILLING CODE 3510-22-P**