

## DEPARTMENT OF COMMERCE

## National Oceanic and Atmospheric Administration

## 50 CFR Part 648

[Docket No. 090211163-9167-01]

RIN 0648-AX69

## Fisheries of the Northeastern United States; Recreational Management Measures for the Summer Flounder, Scup, and Black Sea Bass Fisheries; Fishing Year 2009

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

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

**SUMMARY:** NMFS proposes management measures for the 2009 summer flounder, scup, and black sea bass recreational fisheries. The implementing regulations for these fisheries require NMFS to publish recreational measures for the fishing year and to provide an opportunity for public comment. The intent of these measures is to prevent overfishing of the summer flounder, scup, and black sea bass resources.

**DATES:** Comments must be received by 5 p.m. local time, on May 1, 2009.

**ADDRESSES:** You may submit comments, identified by RIN 0648-AX69, by any one of the following methods:

- Electronic Submissions: Submit all electronic public comments via the Federal eRulemaking Portal <http://www.regulations.gov>.
- Mail and hand delivery: Patricia A. Kurkul, Regional Administrator, NMFS, Northeast Regional Office, 55 Great Republic Drive, Gloucester, MA 01930. Mark the outside of the envelope: "Comments on 2009 Summer Flounder, Scup, and Black Sea Bass Recreational Measures."
- Fax: (978) 281-9135. Send the fax to the attention of the Sustainable Fisheries Division. Include "Comments on 2009 Summer Flounder, Scup, and Black Sea Bass Recreational Measures" prominently on the fax.

Instructions: All comments received are a part of the public record and will generally be posted to <http://www.regulations.gov> without change. All Personal Identifying Information (for example, name, address, etc.) voluntarily submitted by the commenter may be publicly accessible. Do not submit Confidential Business Information or otherwise sensitive or protected information.

NMFS will accept anonymous comments. Attachments to electronic

comments will be accepted in Microsoft Word, Excel, WordPerfect, or Adobe PDF file formats only.

Copies of the recreational management measures document, including the Environmental Assessment, Regulatory Impact Review, and Initial Regulatory Flexibility Analysis (EA/RIR/IRFA) and other supporting documents that the recreational management measures are available from Daniel Furlong, Executive Director, Mid-Atlantic Fishery Management Council, Room 2115, Federal Building, 300 South New Street, Dover, DE 19901-6790. These documents are also accessible via the Internet at <http://www.nero.noaa.gov>.

**FOR FURTHER INFORMATION CONTACT:** Michael Ruccio, Fishery Policy Analyst, (978) 281-9104.

**SUPPLEMENTARY INFORMATION:****Background**

The summer flounder, scup, and black sea bass fisheries are managed cooperatively under the provisions of the Summer Flounder, Scup, and Black Sea Bass Fishery Management Plan (FMP) developed 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 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 (NC) 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°13.3' N. lat. (the latitude of Cape Hatteras Lighthouse, Buxton, NC) northward to the U.S./Canada border.

The Council prepared the FMP under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), 16 U.S.C. 1801 *et seq.* Regulations implementing the FMP appear at 50 CFR part 648, subparts A (general provisions), G (summer flounder), H (scup), and I (black sea bass). 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.

The FMP established Monitoring Committees (Committees) for the three

fisheries, consisting of representatives from the Commission, the Mid-Atlantic Council, state marine fishery agency representatives from MA to NC, and NMFS. The FMP and its implementing regulations require the Committees to review scientific and other relevant information annually and to recommend management measures necessary to achieve the recreational harvest limits established for the summer flounder, scup, and black sea bass fisheries for the upcoming fishing year. The FMP limits these measures to minimum fish size, possession limit, and fishing season.

The Council's Demersal Species Committee and the Commission's Summer Flounder, Scup, and Black Sea Bass Management Board (Board) then consider the Committees' recommendations and any public comment in making their recommendations to the Council and the Commission, respectively. The Council then reviews the recommendations of the Demersal Species Committee, makes its own recommendations, and forwards them to NMFS for review. The Commission similarly adopts recommendations for the states. NMFS is required to review the Council's recommendations to ensure that they are consistent with the targets specified for each species in the FMP.

Quota specifications for the 2009 summer flounder, scup, and black sea bass fisheries were published on January 2, 2009 (74 FR 29). Based on these specifications, the 2009 coastwide recreational harvest limits are 7,158,600 lb (3,247 mt) for summer flounder, 2,585,952 lb (1,173 mt) for scup, and 1,137,810 lb (516 mt) for black sea bass. The specification rules did not establish recreational measures, since final recreational catch data for 2008 were not available when the Council made its recreational harvest limit recommendation to NMFS.

All minimum fish sizes discussed hereafter are total length measurements of the fish, i.e., the straight-line distance from the tip of the snout to the end of the tail while the fish is lying on its side. For black sea bass, total length measurement does not include the caudal fin tendril. All possession limits discussed below are per person.

**Summer Flounder**

Recreational landings for 2008 were estimated to have been 8.14 million lb (3,692 mt). This exceeded, by approximately 31 percent, the 2008 recreational harvest limit of 6.22 million lb (2,821 mt). All states except DE, VA, and NC are projected to have exceeded their state harvest limits established

under the conservation equivalency system utilized to manage the 2008 recreational summer flounder fishery. The magnitude of the overages ranged from a low of 9 percent for NJ to a high of 105 percent for MD.

The 2009 coastwide harvest limit is 7.16 million lb (3,247 mt), a 15.1-percent increase from the 2008 harvest limit of 6.22 million lb (2,821 mt). However, given the magnitude of the 2008 overages, landings must be reduced by 12 percent coastwide from the 2008 levels to ensure that the 2009 harvest limit is not exceeded. The Council is recommending conservation equivalency, described as follows, that would require individual states to reduce summer flounder landings (measured in number of fish) to achieve the necessary recreational harvest reductions for 2009.

NMFS implemented Framework Adjustment 2 to the FMP (Framework Adjustment 2) on July 29, 2001 (66 FR 36208), which established a process that makes conservation equivalency an option for the summer flounder recreational fishery. 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, if implemented by all of the states.

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. Even when the Council and Board recommend conservation equivalency, the Council must specify a set of coastwide measures that would apply if conservation equivalency is not approved.

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. In such a situation, federally permitted charter/party permit holders and recreational vessels fishing for summer flounder in the EEZ would then 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 Commission would require adoption of the precautionary default measures by any state that either does not submit a summer flounder management proposal to the Commission's Summer Flounder Technical Committee (Technical Committee), or that submits measures that are determined not to achieve the required level of reduction for that state. The precautionary default measures are defined as the set of measures that would achieve at least the highest percent reduction for any state on a coastwide basis.

In December 2008, the Council and Board voted to recommend conservation equivalency to achieve the 2009 recreational harvest limit. The Commission's conservation equivalency guidelines require the states to determine and implement appropriate state-specific management measures (i.e., possession limits, fish size limits, and fishing seasons) to achieve state-specific harvest limits. States may also form voluntary regions wherein the member states' measures must achieve the overall reduction required for the region in question.

For 2009, the Commission is requiring that states that must reduce landings to ensure that at least 50 percent of the percent reduction derive from a modification to the fishing season. The Monitoring Committee and the Technical Committee have both stated that modification of season length is typically more effective at reducing landings than are modifications to minimum fish size and possession limits. The Commission is not requiring the use of any other adjustments or reductions similar to the performance-based adjustment factor that was utilized in 2008.

According to the conservation equivalency procedures established in Framework Adjustment 2, each state except DE, VA, and NC would be required to reduce 2009 landings by the percentages shown in Table 1. DE, VA, and NC may submit more liberal management measures, provided that they are sufficient to ensure their 2009 state harvest limits are not exceeded. ME and NH have no recreational summer flounder harvest limit and are not required to submit management measures to the Commission.

Under conservation equivalency, state-specific landings from 1998 are used as the baseline for individual state's reductions, because 1998 was the

last year that recreational summer regulations were consistent along the coast. Recreational landings in 1998 were 6.978 million fish coastwide; the 2009 recreational harvest limit translates into 2.069 million fish (i.e., 7.16 million lb (3,247 mt) recreational harvest limit divided by predicted 2009 average fish weight of 3.46 lb/fish (1.57 kg/fish)). As such, landings must be reduced by 70.4 percent in 2009 to achieve the 1998 baseline level of landings.

TABLE 1. 2009 CONSERVATION EQUIVALENCY STATE-SPECIFIC HARVEST TARGETS (THOUSANDS OF FISH): 1998 BASELINE; 2009 TARGET, 2008 PROJECTED LANDINGS, AND PERCENT REDUCTIONS.

State	1998 Base-line Target (X '000 fish)	2009 Target (X '000 fish) <sup>A</sup>	2008 Projected Landings(X '000 fish)	Re-quired Percent Red-uction for 2009
MA	383	114	150	24
RI	395	117	200	42
CT	261	77	118	35
NY	1,230	365	600	39
NJ	2,728	809	870	7
DE	219	65	33	0
MD	206	61	125	51
VA	1,165	345	231	0
NC	391	116	54	0

<sup>A</sup>Based on a 70.4-percent reduction in 1998 landings and an estimated 2009 mean fish weight of 3.46 lb (1.57 kg)

The Board required that each state submit its conservation equivalency proposals to the Commission by late January 2009. The Technical Committee then evaluated the proposals and advised the Board of each proposal's consistency with respect to achieving the coastwide recreational harvest limit. The Commission invited public participation in its review process by allowing public comment on the state proposals at the Technical Committee meeting held on January 28, 2009. The Board met on February 3, 2009, and approved a range of management proposals for each state designed to attain conservation equivalency. Once the states select and submit their final summer flounder management measures to the Commission, the Commission will notify NMFS as to which individual state proposals have been approved or disapproved. NMFS retains the final authority either to approve or to disapprove using conservation equivalency in place of the coastwide measures and will publish its

determination as a final rule in the **Federal Register** to establish the 2009 recreational measures for these fisheries.

States that do not submit conservation equivalency proposals, or whose proposals are disapproved by the Commission, will be required by the Commission to adopt the precautionary default measures. In the case of states that are initially assigned precautionary default measures, but subsequently receive Commission approval of revised state measures, NMFS will publish a notice in the **Federal Register** announcing a waiver of the permit condition at § 648.4(b). The suite of state proposals for 2009 has initially been approved by the Commission. Therefore, a state would only be required to implement precautionary default measures if the measures submitted for final Commission approval are different than those preliminarily approved by the Commission or for failing to finalize conservation equivalent measures for 2009.

The precautionary default measures recommended by the Council and Board during their joint December 2008 meeting are for a 21.5-inch (54.61-cm) minimum fish size, a possession limit of one fish, and an open season of July 4 through September 7, 2009.

As described above, for each fishing year, NMFS implements either coastwide measures or conservation equivalent measures at the final rule stage. The coastwide measures recommended by the Council and Board for 2009 are a 20-inch (50.80-cm) minimum fish size, a possession limit of two fish, and an open season from May 1 to September 30, 2009.

In this action, NMFS proposes to implement conservation equivalency with a precautionary default backstop, as previously outlined, for states that either fail to submit conservation equivalent measures or whose measures are disapproved by the Commission. NMFS proposes the non-preferred alternative of coastwide measures, as previously described, for use if conservation equivalency is not approved in the final rule. The coastwide measures would be waived if conservation equivalency is approved in the final rule.

### Scup

The 2009 scup recreational harvest limit is 2,585,952 lb (1,173 mt), a 41-percent increase from the 2008 recreational harvest limit of 1.83 million lb (830 mt). Recreational landings are estimated to have been 4.75 million lb (2,155 mt).

Development of scup recreational management measures has been substantially complicated for 2009 following the results of a Northeast Fisheries Science Center (Center) Data Poor Stocks Working Group (DPSWG). The peer-reviewed results of the DPSWG has resulted in the adoption of revised scup biological reference points, a new stock assessment modeling approach, and a more favorable overall status of the stock than was previously available. In fact, the scup stock is now considered rebuilt, not overfished, and not subject to overfishing in 2007, the year for which the most recent information was available during the DPSWG.

The Council and Commission, at the time of their December 9–11, 2008, meeting, did not have the final DPSWG results; these were not available until January 20, 2009. As such, the Council and Commission adopted recommendations for scup measures based on the proposed 2009 scup TAL and recreational harvest limit as outlined in the October 28, 2008, proposed rule (73 FR 63934) issued by NMFS. This was a TAL of 7.34 million lb (3,329 mt) and a recreational harvest limit of 1.83 million lb (830 mt). This would have required a 63-percent reduction in scup landings for 2009.

The DPSWG peer-review was concluded December 12, 2008. The peer-review panel recommended during the meeting proceedings that the new modeling approach, biological reference points, and revised stock status be accepted for management advice for scup, provided sufficient attention was paid to the many uncertainties remaining in the new assessment. On the strength of this recommendation, NMFS increased the scup TAL from the 7.34 million lb (3,329 mt) proposed in October, to an 11.18-million-lb (4,170-mt) scup TAL in the final rule for the 2009 specifications. This increased the recreational harvest limit from 1.83 million lb (830 mt) to 2.59 million lb (1,173 mt). However, the Council was unable to revisit its recommendation, so the preferred measures proposed by the Council include a 12-inch (30.48-cm) minimum fish size, a January 1–February 28 and October 1–October 31, 2009, fishing season, and a 25-fish possession limit. The non-preferred alternatives offered by the Council were to retain *status quo* measures from 2008 or to close the Federal waters of the EEZ for 2009.

On February 3, 2009, the Commission's Scup Management Board (Board) elected to maintain *status quo* scup management measures from 2008 for state waters in 2009. Under this

system, the states from MA to NY, which typically account for 95 to 97 percent of state water scup harvest, would have similar measures: Different minimum fish sizes; possession limits; and fishing seasons for private vessels/shore based anglers and party/charter vessels. A minimum fish size of 10.5 inches (26.7 cm), a common possession limit (10 fish), and a May 24 through September 26 fishing season for private vessels and shore-based anglers; party and charter vessels could take scup for up to 126 days under two distinct seasons with separate minimum fish sizes, possession limits, and seasons. One charter/party season, designated as "bonus fishery," has a minimum fish size of 11.0 inches (27.94 cm), a 45-fish possession limit, and is constrained to a 45-day period within May 15 through October 15. The second party/charter season designation is the "non-bonus fishery," which carries an 11.0-inch (27.94-cm) minimum fish size, a 10-fish possession limit, and is 81 days in duration either prior to or following the dates of the open season. Due to low scup landings in NJ through NC, the Board approved the retention of *status quo* management measures for those states, i.e., a 10-inch (25.40-cm) minimum fish size, a 50-fish possession limit, and open seasons of January 1 through February 29 and September 18 through November 30.

Very little of the scup recreational harvest comes from the Federal waters of the EEZ. The average total scup recreational harvest from Federal waters for the years 1998–2007 is slightly over 6 percent. In 2007, the percentage was slightly over 2 percent. NMFS is proposing to implement the Council's non-preferred alternative of status quo for the 2009 fishing year: A 10.5-inch (26.67-cm) minimum fish size; a 15-fish per person possession limit; and open seasons of January 1 through February 28, and October 1 through October 31, 2009. While these measures may result in a minor increase in 2009 scup recreational landings, the majority of landings will occur from state waters where NMFS has no jurisdiction. The state or Federal combined recreational landings are not likely to result in the scup stock being overfished or to result in overfishing.

### Black Sea Bass

Recreational landings in 2008 were estimated to have been 1.27 million lb (576 mt)--40 percent below the 2008 target of 2.11 million lb (957 mt) but 10.5 percent above the 2009 target of 1.137 million lb (516 mt). The 2009 recreational harvest limit of 1.137 million lb (516 mt) is a 46.1-percent

decrease from the 2008 target. Based on 2008 estimated landings, a 10-percent reduction in coastwide landings is necessary to achieve the 2009 target.

For Federal waters, the Council and Board have recommended measures that would increase the 12.0-inch (30.48-cm) minimum fish size from 2008 to 12.5 inches (31.75 cm) in 2009 and maintain the status quo 25-fish possession limit and open season of January 1 through December 31, 2009. NMFS proposes to implement the Council and Board recommended measures, which are expected to constrain recreational black sea bass landings to the 2009 target.

### Classification

Pursuant to section 304 (b)(1)(A) of the Magnuson-Stevens Act, the Assistant Administrator has determined that this proposed rule is consistent with the Summer Flounder, Scup, and Black Sea Bass FMP, other provisions of the Magnuson-Stevens Act, and other applicable law, subject to further consideration after public comment.

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**. A summary of the analysis follows. A copy of the complete IRFA 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, scup, or black sea bass in the EEZ or on a party/charter vessel issued a Federal permit for summer flounder, scup, and/or black sea bass. However, the IRFA focuses upon the impacts on party/charter vessels issued a Federal permit for summer flounder, scup, and/or black sea bass, because these vessels are considered small entities for the purposes of the RFA, i.e., businesses in the recreational fishery with 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. Although individual recreational anglers are likely to 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.

The Council estimated that the proposed measures could affect any of the 962 vessels possessing a Federal charter/party permit for summer flounder, scup, and/or black sea bass in 2007, the most recent year for which complete permit data are available. However, only 342 of these vessels reported active participation in the recreational summer flounder, scup, and/or black sea bass fisheries in 2007.

In the IRFA, the no-action alternative (i.e., maintenance of the regulations as codified) is defined as implementation of the following: (1) For summer flounder, coastwide measures of a 20-inch (50.8-cm) minimum fish size, a 2-fish possession limit, and a season from May 1 through September 30, i.e., the Federal regulatory measure that would be implemented if conservation equivalency is not implemented in the final rule; (2) for scup, a 10.5-inch (26.67-cm) minimum fish size, a 15-fish possession limit, and open seasons of January 1 through February 28, and October 1 through October 31; and (3) for black sea bass, a 12-inch (30.48-cm) minimum size, a 25-fish possession limit, and an open season of January 1 through December 31.

The no-action alternative for scup is the same (*status quo*) set of measures being proposed for 2009. As such, since there is no regulatory change being proposed for scup, there is no further discussion of the economic impacts within this section.

The impacts of the proposed action on small entities (i.e., federally permitted party/charter vessels in each state in the Northeast region) was analyzed, assessing potential changes in gross revenues for all 18 combinations of alternatives proposed. Although NMFS's RFA guidance recommends assessing changes in profitability as a result of proposed measures, the quantitative impacts were instead evaluated using changes in party/charter vessel revenues as a proxy for profitability. This is because reliable cost and revenue information is not available for charter/party vessels at this time. Without reliable cost and revenue data, profits cannot be discriminated from gross revenues. As reliable cost data become available, impacts to profitability can be more accurately forecast. Similarly, changes to long-term solvency were not assessed due both to the absence of cost data and because the recreational management measures

change annually according to the specification-setting process. Effects of the various management measures were analyzed by employing quantitative approaches, to the extent possible. Where quantitative data were not available, qualitative analyses were utilized. Management measures proposed under the summer flounder conservation equivalency alternative (Summer Flounder Alternative 1) have yet to be adopted; therefore, potential losses under this alternative could not be analyzed in conjunction with various alternatives proposed for scup and black sea bass. Since conservation equivalency allows each state to tailor specific recreational fishing measures to the needs of that state, while still achieving conservation goals, it is likely that the measures developed under this alternative, when considered in combination with the measures proposed for scup and black sea bass, would have fewer overall adverse effects than any of the other combinations that were analyzed.

Impacts for other combinations of alternatives were examined by first estimating the number of angler trips aboard party/charter vessels in each state in 2008 that would have been affected by the proposed 2009 management measures. All 2008 party/charter fishing trips that would have been constrained by the proposed 2009 measures in each state were considered to be affected trips. MRFSS data indicate that anglers took 37.49 million fishing trips in 2008 in the Northeastern U.S., and that party/charter anglers accounted for 5 percent of the angler fishing trips, private/rental boat trips accounted for 51 percent of angler fishing trips, and shore trips accounted for 44 percent of recreational angler fishing trips. The number of party/charter trips in each state ranged from 36,566 in DE to 335,740 in NJ (excluding ME and NH).

There is very little empirical evidence available to estimate how the party/charter vessel anglers might be affected by the proposed fishing regulations. If the proposed measures discourage trip-taking behavior among some of the affected anglers, economic losses may accrue to the party/charter vessel industry in the form of reduced access fees. On the other hand, if the proposed measures do not have a negative impact on the value or satisfaction the affected anglers derive from their fishing trips, party/charter revenues would remain unaffected by this action. In an attempt to estimate the potential changes in gross revenues to the party/charter vessel industry in each state, two hypothetical scenarios were considered:

A 25-percent reduction, and a 50-percent reduction, in the number of fishing trips that are predicted to be affected by implementation of the management measures in the Northeast (ME through NC) in 2009.

Total economic losses to party/charter vessels were then estimated by multiplying the number of potentially affected trips in each state in 2009, under the two hypothetical scenarios, by the estimated average access fee of \$60.86<sup>1</sup> paid by party/charter anglers in the Northeast in 2007. Finally, total economic losses were divided by the number of federally permitted party/charter vessels that participated in the summer flounder fisheries in 2007 in each state (according to homeport state in the Northeast Region Permit Database) to obtain an estimate of the average projected gross revenue loss per party/charter vessel in 2009. The analysis assumed that angler effort and catch rates in 2009 will be similar to 2008.

The Council noted that this method is likely to overestimate the potential revenue losses that would result from implementation of the proposed measures in these three fisheries for several reasons. First, the analysis likely overestimates the potential revenue impacts of these measures because some anglers would continue to take party/charter vessel trips, even if the restrictions limit their landings. Also, some anglers may engage in catch and release fishing and/or target other species. It was not possible to estimate the sensitivity of anglers to specific management measures. Second, the universe of party/charter vessels that participate in the fisheries is likely to be even larger than presented in these analyses, as party/charter vessels that do not possess a Federal summer flounder, scup, or black sea bass permit because they fish only in state waters are not represented in the analyses. Considering the large proportion of landings from state waters (e.g., more than 90 percent of summer flounder and 94 percent of scup landings in 2007, respectively), it is probable that some party/charter vessels fish only in state waters and, thus, do not hold Federal permits for these fisheries. Third, economic losses are estimated under two hypothetical scenarios: (1) A 25-percent and (2) a 50-percent reduction in the number of fishing trips that are predicted to be affected by implementation of the management measures in the Northeast in 2009. Reductions in fishing effort of

this magnitude in 2009 are not likely to occur, given the fact that the proposed measures do not prohibit anglers from keeping at least some of the fish they catch, or the fact that there are alternative species to harvest. Again, it is likely that at least some of the potentially affected anglers would not reduce their effort when faced with the proposed landings restrictions, thereby contributing to the potential overestimation of potential impacts for 2009.

#### Impacts of Summer Flounder Alternatives

The proposed action for the summer flounder recreational fishery would limit coastwide catch to 7.16 million lb (3,247 mt) by imposing coastwide Federal measures throughout the EEZ. As described earlier, upon 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.

The impact of the proposed summer flounder conservation equivalency alternative (in Summer Flounder Alternative 1) among states is likely to be similar to the level of landings reductions that are required of each state. As indicated above, each state except DE, VA, and NC would be required to reduce summer flounder landings in 2009, relative to state 2008 landings, by the percentages shown in Table 1 of the preamble of this proposed rule. If the preferred conservation equivalency alternative is effective at achieving the recreational harvest limit, then it is likely to be the only alternative that minimizes adverse economic impacts, to the extent practicable, yet achieves the biological objectives of the FMP. Because states have a choice, it is expected that the states would adopt conservation equivalent measures that result in fewer adverse economic impacts than the more restrictive Commission adopted, NMFS proposed precautionary default measures (i.e., 21.5-inch (54.61-cm) minimum fish size, a possession limit of one fish, and an open season of July 4 through September 7). Under the precautionary default measures, impacted trips are defined as trips taken in 2008 that

landed at least one summer flounder smaller than 21.5 inches (54.61 cm) or landed summer flounder during closed seasons. The analysis concluded that implementation of precautionary default measures could affect 3.0 percent of the party/charter vessel trips in the Northeast, including those trips where no summer flounder were caught.

The impacts of the NMFS proposed summer flounder coastwide alternative, i.e., a 20-inch (50.80-cm) minimum fish size, a two-fish possession limit, and a fishing season from May 1 through September 30, were evaluated using the quantitative method described above. Impacted trips were defined as individual angler trips taken aboard party/charter vessels in 2008 that landed at least one summer flounder smaller than 20 inches (50.80 cm), that landed more than two summer flounder, or landed summer flounder during closed seasons. The analysis concluded that the measures would affect 0.69 percent of the party/charter vessel trips in the Northeast, including those trips where no summer flounder were caught.

Continuation of the current regulatory summer flounder coastwide management measures (i.e., a 19-inch (48.26-cm) minimum fish size, two-fish possession limit, and a May 23 through September 1 fishing season) is not expected to constrain 2009 landings to the recreational harvest limit; therefore, continuation of those measures would be inconsistent with the summer flounder rebuilding program, the FMP, and the Magnuson-Stevens Act.

#### Impacts of Black Sea Bass Alternatives

The proposed action for the black sea bass recreational fishery would limit coastwide catch to 1.14 million lb (516 mt) by imposing coastwide Federal measures throughout the EEZ. The impact of the Council and Commission preferred black sea bass alternative (Black Sea Bass Alternative 1; a 12.5-inch (31.75-cm) minimum fish size, a 25-fish per person possession limit, and an open season of January 1–December 31, 2009) would reduce black sea bass landings by 12 percent in 2009 from 2008 levels. Impacted trips were defined as trips taken in 2008 that landed at least one black sea bass smaller than 12.5 inches (31.75 cm) or landed more than 25 black sea bass. Analysis concluded that 0.52 percent of federally permitted party/charter vessel trips could be impacted by this alternative.

The impacts of the non-preferred black sea bass coastwide alternative for *status quo* (Black Sea Bass Alternative 2; 12.0-inch (30.87-cm) minimum fish size, 25-fish per person possession limit, and no closed season) is not

<sup>1</sup> 2006 party/charter average expenditure estimate of \$57.76 adjusted to 2008 equivalent using Bureau of Labor's Consumer Price Index.

expected to constrain 2009 landings to the recreational harvest limit; therefore, continuation of those measures in Federal waters would be inconsistent with the FMP and the Magnuson-Stevens Act.

Black Sea Bass Alternative 3, (a 12.0-inch (30.87-cm) minimum fish size, 25-fish per person possession limit, and closed fishing season from May 16–June 14, 2009) would reduce landings by 13.3 percent. This is the most restrictive alternative analyzed by the Council. Implementation of this alternative would result in a greater reduction than is required for the 2009 recreational black sea bass fishery.

Regionally, projected federally permitted party/charter revenue losses in 2009 range from \$1.20 million to \$5.72 million in sales, \$440,000 to \$1.94 million in income, and between 38 and 192 jobs, if a 25-percent reduction in the number of affected trips occurs. The estimated losses are approximately twice as high if a 50-percent reduction in affected trips is assumed to occur.

Potential revenue losses in 2009 could differ for federally permitted party/charter vessels that land more than one of the regulated species. The cumulative maximum gross revenue loss per vessel varies by the combination of permits held and by state. All 18 potential combinations of management alternatives for summer flounder, scup, and black sea bass are predicted to affect party/charter vessel revenues to some extent in all of the northeastern coastal states. Although potential losses were estimated for party/charter vessels operating out of ME and NH, these results are suppressed for confidentiality purposes. Average party/charter losses for federally permitted vessels operating in the remaining states are estimated to vary across the 18 combinations of alternatives. For example, in MD, average losses are predicted to range from a high of \$7,068 per vessel to a low of \$1,860 per vessel, assuming a 25-percent reduction in effort, as described above. Average gross revenue losses per vessel under each of the 18 combinations of alternatives were generally highest in NC followed by NY, MA, MD, NJ, RI, VA, CT, then DE.

### Summary

The 2009 recreational harvest limits for summer flounder and scup are 15.3- and 41.5-percent higher, respectively, than the recreational harvest limits for year 2008. The 2009 black sea bass recreational harvest limit is 46 percent lower than the 2008 recreational harvest limit.

The 2008 summer flounder recreational fishery exceeded the

recreational harvest limit by 31 percent. As a result, the proposed recreational management measures for summer flounder are likely to be more restrictive for 2009 (i.e., either larger minimum fish size, lower possession limits, and/or shorter fishing seasons) under the proposed conservation equivalency system (Summer Flounder Alternative 1) than those in place in 2008, given the magnitude of exceeding the previous year recreational harvest limit.

The scup recreational harvest limit was substantially increased for 2009. Action taken by the Commission to maintain *status quo* measures for state waters will result in landings that are similar to 2008. Only a very minor fraction of the recreational harvest limit is taken in the Federal waters of the EEZ. While retaining *status quo* measures for Federal waters may result in minor increases in scup recreational landings, over 95 percent of landings are expected to occur from state waters that are outside NMFS's jurisdiction. Given the revised stock status for scup, maintenance of the status quo is not expected to result in overfishing or moving the stock towards an overfished condition.

The proposed measures for black sea bass are more restrictive than the measures in place for 2008.

The proposed management measures, or management system in the case of conservation equivalency, were chosen because they allow for the maximum level of recreational landings, while allowing the NMFS to achieve the objectives of the FMP. Summer flounder conservation equivalency permits states to implement management measures tailored, to some degree, to meet the needs of their individual recreational fishery participants, provided the level of reduction is equal to the overall reduction needed coastwide, consistent with Framework Adjustment 2 to the FMP. The maintenance of scup *status quo* was selected because it will allow for a modest fishery in Federal waters while ensuring that overfishing does not occur in 2009. The majority of scup recreational harvest occurs within state waters, beyond the jurisdiction of NMFS. The black sea bass management measures were selected as they are projected to permit the maximum amount of landings under the 2009 recreational harvest limit.

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: March 26, 2009

**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 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 § 648.102, the first sentence is revised to read as follows:

#### § 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 summer flounder from May 1 through September 30. \* \* \*

\* \* \* \* \*

3. 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 20.0 inch (50.80 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.

\* \* \* \* \*

4. 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 two 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. \* \* \*

\* \* \* \* \*

5. In § 648.107, paragraph (a) introductory text and paragraph (b) are revised to read as follows:

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

(a) The Regional Administrator has determined that the recreational fishing measures proposed to be implemented by Massachusetts through North

Carolina for 2009 are the conservation equivalent of the season, minimum fish size, and possession limit prescribed in §§ 648.102, 648.103, and 648.105(a), respectively. This determination is based on a recommendation from the Summer Flounder Board of the Atlantic States Marine Fisheries Commission.

\* \* \* \* \*

(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 - July 4 through September 7; minimum size - 21.5 inches (54.61 cm); and possession limit - one fish.

6. In § 648.143, paragraph (b) is revised to read as follows:

**§ 648.143 Minimum sizes.**

\* \* \* \* \*

(b) The minimum fish size for black sea bass is 12.5 inches (31.75 cm) TL for all vessels that do not qualify for a moratorium permit, and for party boats holding a moratorium permit, if fishing with passengers for hire or carrying more than five crew members, and for charter boats holding a moratorium permit, if fishing with more than three crew members.

\* \* \* \* \*

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