

the Edges seasonal-area closure consistent with the intent of Amendment 30B. The Edges seasonal-area closure prohibits fishing for any species under Council jurisdiction from January 1 through April 30 each year. This closure creates a larger contiguous area within which fishing activity and fishing mortality will be reduced. This will provide additional protection for spawning aggregations of various grouper species some of which are experiencing overfishing, benefit other reef fish undergoing overfishing, and facilitate more effective enforcement. Additional rationale for the measures contained in Amendment 30B was correctly stated in the preamble to the Amendment 30B proposed rule (73 FR 68390, November 18, 2008) and in the amendment and is not repeated here.

**Comments and Responses**

NMFS received one comment on the proposed rule from a recreational fisherman that was beyond the scope of this rulemaking. Therefore no response has been provided.

**Change from the Proposed Rule**

In § 622.2, this rule corrects a typographical error in the spelling of the species name for Caribbean queen conch. This correction is unrelated to the actions taken via Amendment 30B.

**Classification**

The Administrator, Southeast Region, NMFS, determined that this final rule is necessary for the conservation and management of the Gulf reef fish fishery and is consistent with the Magnuson-Stevens Act and other applicable laws.

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

NMFS prepared a Final Environmental Impact Statement (FEIS) for Amendment 30B. The FEIS was published on October 24, 2008 (73 FR 63470).

NMFS prepared a FRFA for Amendment 30B. The FRFA incorporates the initial regulatory flexibility analysis (FRFA), a summary of the significant issues raised by the public comments in response to the IRFA, NMFS's responses to those comments, and a summary of the analyses completed to support the actions, including the action in this rule. A summary of the FRFA is provided in the final rule for Amendment 30B published on April 16, 2008 (73 FR 68390), and is not repeated here. A copy of the full analysis is available from NMFS (see ADDRESSES).

**List of Subjects in 50 CFR Part 622**

Fisheries, Fishing, Puerto Rico, Reporting and recordkeeping requirements, Virgin Islands.

Dated: June 18, 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 622 is amended as follows:

**PART 622—FISHERIES OF THE CARIBBEAN, GULF, AND SOUTH ATLANTIC**

■ 1. The authority citation for part 622 continues to read as follows:

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

■ 2. In § 622.2, the definition of “Caribbean queen conch or queen conch” is revised to read as follows:

**§ 622.2 Definitions and acronyms.**

\* \* \* \* \*

*Caribbean queen conch or queen conch* means the species, *Strombus gigas*, or a part thereof.

\* \* \* \* \*

■ 3. In § 622.34, the introductory heading of paragraph (k), paragraphs (k)(2), (k)(3), and the first sentence of paragraph (k)(5) are revised and paragraph (k)(1)(iii) is added to read as follows:

**§ 622.34 Gulf EEZ seasonal and/or area closures.**

\* \* \* \* \*

(k) *Closure provisions applicable to the Madison and Swanson sites, Steamboat Lumps, and the Edges.*

(1) \* \* \*

(iii) The Edges is bounded by rhumb lines connecting, in order, the following points:

Point	North lat.	West long.
A	28°51'	85°16'
B	28°51'	85°04'
C	28°14'	84°42'
D	28°14'	84°54'
A	28°51'	85°16'

(2) Within the Madison and Swanson sites and Steamboat Lumps, possession of Gulf reef fish is prohibited, except for such possession aboard a vessel in transit with fishing gear stowed as specified in paragraph (k)(4) of this section.

(3) Within the Madison and Swanson sites and Steamboat Lumps during November through April, and within the Edges during January through April, all fishing is prohibited, and possession of any fish species is prohibited, except for

such possession aboard a vessel in transit with fishing gear stowed as specified in paragraph (k)(4) of this section. The provisions of this paragraph, (k)(3), do not apply to highly migratory species.

\* \* \* \* \*

(5) Within the Madison and Swanson sites and Steamboat Lumps, during May through October, surface trolling is the only allowable fishing activity. \* \* \*

\* \* \* \* \*

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**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

**50 CFR Part 648**

[Docket No. 090211163-9795-02]

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:** Final rule.

**SUMMARY:** NMFS implements recreational management measures for the 2009 summer flounder and black sea bass fisheries and notifies the public that the recreational management measures for the scup fishery remain the same as in 2008. These actions are necessary to comply with regulations implementing the Summer Flounder, Scup, and Black Sea Bass Fishery Management Plan (FMP) and to ensure compliance with the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). The intent of these measures is to prevent overfishing of the summer flounder, scup, and black sea bass resources.

**DATES:** Effective July 24, 2009.

**ADDRESSES:** Copies of supporting documents used by the Summer Flounder, Scup, and Black Sea Bass Monitoring Committees and 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>. The Final Regulatory Flexibility Analysis (FRFA) consists of the IRFA, public comments and responses contained in this final rule, and the summary of impacts and alternatives contained in this final rule. Copies of the small entity compliance guide and EA/RIR/IRFA document are available from Patricia A. Kurkul, Regional Administrator, Northeast Region, NMFS, 55 Great Republic Drive, Gloucester, MA 01930-2276.

**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 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 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 management measures that apply in the Exclusive Economic Zone (EEZ). The states manage these fisheries within 3 nautical miles of their coasts, under the

Commission's plan for summer flounder, scup, and black sea bass. The Federal regulations govern fishing activity in the EEZ, as well as vessels possessing a Federal fisheries permit, regardless of where they fish.

The 2009 coastwide recreational harvest limits, after deduction of research set-aside (RSA), 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 2009 quota specifications, inclusive of the recreational harvest limits, were previously determined to be consistent with the 2009 target fishing mortality rate (F) for summer flounder and the target exploitation rates for scup and black sea bass.

The proposed rule to implement annual Federal recreational measures for the 2009 summer flounder, scup, and black sea bass fisheries was published on April 1, 2009 (74 FR 14760), and contained management measures (minimum fish sizes, possession limits, and fishing seasons) intended to keep annual recreational landings from exceeding the specified harvest limits.

**2009 Recreational Management Measures**

Additional discussion on the development of the recreational management measures appeared in the preamble of the proposed rule and is not repeated here. All minimum fish sizes

discussed below 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 Management Measures**

Based on the recommendation of the Commission, the NMFS Northeast Regional Administrator finds that the recreational summer flounder fishing measures proposed to be implemented by the states of Massachusetts through North Carolina for 2009 are the conservation equivalent of the season, minimum size, and possession limit prescribed in §§ 648.102, 648.103, and 648.105(a), respectively. According to § 648.107(a)(1), vessels subject to the recreational fishing measures of this part and landing summer flounder in a state with an approved conservation equivalency program shall not be subject to the more restrictive Federal measures, and shall instead be subject to the recreational fishing measures implemented by the state in which they land. Section 648.107(a) has been amended accordingly. The management measures will vary according to the state of landing, as specified in the following table.

TABLE 1 — 2009 STATE RECREATIONAL MANAGEMENT MEASURES FOR SUMMER FLOUNDER

State	Minimum Fish Size		Possession Limit (number of fish)	Fishing Season
	inches	cm		
MA	18.5	46.99	5	July 1 through August 13
RI	21.0	53.34	6	June 17 through December 31
CT	19.5	49.53	3	June 15 through August 19
NY	21.0	53.34	2	May 15 through June 15 and July 3 through August 17
NJ	18.0	45.72	6	May 23 through September 4
DE	18.5	46.99	4	January 1 through December 31
MD <sup>1</sup>	18.0	45.72	3	April 15 through September 13
VA	19.0	48.26	5	January 1 through December 31
NC <sup>2</sup>	15.0	38.10	8	January 1 through December 31

<sup>1</sup>Chesapeake Bay, MD – a 16.5-in (41.91-cm) minimum fish size, a 1-fish possession limit, and a fishing season of April 15–September 13 applies.

<sup>2</sup>Pamlico Sound, NC – No person may possess flounder less than 14.0 in (35.56 cm) total length (TL) taken from internal waters for recreational purposes west of a line beginning at a point on Point of Marsh in Carteret County at 35° 04.6166' N lat.–76° 27.8000' W long., then running northeasterly to a point at Bluff Point in Hyde County at 35° 19.7000' N lat.–76° 09.8500' W long. In Core and Clubfoot creeks, the Highway 101 Bridge constitutes the boundary north of which flounder must be at least 14.0 (35.56 cm) in TL.

<sup>2</sup>Pamlico Sound, NC – No person may possess flounder less than 14.0 in (35.56 cm) total length (TL) taken from internal waters for recreational purposes west of a line beginning at a point on Point of Marsh in Carteret County at 35° 04.6166' N lat.–76° 27.8000' W long., then running northeasterly to a point at Bluff Point in Hyde County at 35° 19.7000' N lat.–76° 09.8500' W long. In Core and Clubfoot creeks, the Highway 101 Bridge constitutes the boundary north of which flounder must be at least 14.0 (35.56 cm) in TL.

*Albemarle Sound, NC* – No person may possess flounder less than 14.0 in (35.56 cm) TL taken from internal waters for recreational purposes west of a line beginning at a point 35° 57.3950' N lat.– 76° 00.8166' W long. on Long Shoal Point; running easterly to a point 35° 56.7316' N lat.–75° 59.3000' W long. near Marker “5” in Alligator River; running northeasterly along the Intracoastal Waterway to a point 36° 09.3033' N lat.–75° 53.4916' W long. near Marker “171” at the mouth of North River; running northwesterly to a point 36° 09.9093' N lat.–75° 54.6601' W long. on Camden Point.

*Browns Inlet South, NC* – No person may possess flounder less than 14.0 in (35.56 cm) TL in internal and Atlantic Ocean fishing waters for recreational purposes west and south of a line beginning at a point 34° 37.0000' N lat.–77° 15.000' W long.; running southeasterly to a point 34° 32.0000' N lat.–77° 10.0000' W long.

*Scup Management Measures* 2008 and codified. The 2009 measures are unchanged from those at 50 CFR part 648, subpart I, and are presented in Table 2.

Table 2 contains the coastwide Federal measures for scup in effect for

TABLE 2 — 2009 SCUP RECREATIONAL MANAGEMENT MEASURES

Fishery	Minimum Fish Size		Possession Limit	Fishing Season
	inches	cm		
Scup	10.5	26.67	15 fish	January 1 through February 28, and October 1 through October 31

The scup fishery in state waters will be managed under a regional conservation equivalency system developed through the Commission over the last 7 years. Because the Federal FMP does not contain provisions for conservation equivalency, and states may adopt their own unique measures,

the Federal and state recreational scup management measures will differ for 2009.

*Black Sea Bass Management Measures*

This rule implements the black sea bass measures contained in the April 1, 2009, proposed rule: An increase in

minimum fish size from 12.0 to 12.5 inches (30.48 cm to 31.75 cm) and *status quo* measures for possession limit (25 fish per person) and fishing season (January 1–December 31, 2009). Table 3 contains the 2009 coastwide Federal measures for black sea bass.

TABLE 3 — 2009 BLACK SEA BASS RECREATIONAL MANAGEMENT MEASURES

Fishery	Minimum Fish Size		Possession Limit	Fishing Season
	inches	cm		
Black Sea Bass	12.5	31.75	25 fish	January 1 through December 31

**Comments and Responses**

Four comment letters were received regarding the proposed recreational management measures (74 FR 14760, April 1, 2009). Comments were received from two organizations: One from the New York State Department of Environmental Conservation’s (NY DEC) Bureau of Marine Fisheries; and the other on behalf of a recreational fishing trade and advocacy organization, the United Boatmen of New York (UBNY). The other two comments were from private citizens. One private citizen commenter expressed general displeasure at how Total Allowable Landings (TALs) and other quotas are established but did not provide specific comment on the recreational management measures. No specific response is provided to this individual’s comments, as the relevance to the recreational management measures could not be ascertained.

The materials submitted by UBNY did not make specific comments about the proposed 2009 recreational management measures. The materials submitted reference the comments submitted by

NY DEC and highlight many similar issues specifically commented on by NY DEC. Therefore, NMFS considers the response to the NY DEC comments as responsive to the UBNY concerns as well. Many of the issues raised by commenters for the 2009 recreational management measures are identical to those raised for the 2008 recreational management measures and are, in turn, the same as the arguments made by plaintiffs, which include the NY DEC and UBNY, in an ongoing lawsuit against the Secretary of Commerce (Secretary) for implementation of the 2008 summer flounder measures.<sup>1</sup>

*Comment 1:* The NY DEC alleged that state-by-state conservation equivalency violates National Standard 2 of the Magnuson-Stevens Act, which requires conservation and management actions to be based upon the best available scientific information.

Specifically, the commenter alleged the following ways that state-by-state conservation equivalency violates

National Standard 2: (a) The use of Marine Recreational Fishery Statistical Survey (MRFSS) data to develop state-by-state conservation equivalency measures has inadequate resolution for state-level monitoring and management. The comment cites the 2006 NOAA-commissioned National Academy of Sciences independent review of MRFSS that stated monitoring fisheries at a state level is a finer stratification than originally intended for the data collected, and that the existing sampling strata may be too coarse a resolution to generate estimates that are adequate for management requirements; (b) the use of 1998 as a landings baseline as the starting point for landings reductions is outdated, inadequate, and flawed; (c) state-by-state conservation equivalency is not responsive to changes that have occurred in stock status wherein the summer flounder stock has redistributed and is composed of larger, older fish, particularly adjacent to New York State; and (d) the level of angler effort and distribution has changed substantially since 1998, and MRFSS data would support increasing the percentage of

<sup>1</sup>State of New York et al. v. Gutierrez et al. Civil Action No. 08-cv-02503-CPS

summer flounder recreational landings allocated to New York.

*Response:* NMFS disagrees that managing the summer flounder recreational fishery using state-by-state conservation equivalency is a violation of National Standard 2. The following responds to the specific points raised in the above comment:

a. The information provided by MRFSS, along with additional information provided by individual states and fishery independent surveys, is sufficient and appropriate to manage the recreational summer flounder fishery on a state-by-state basis.

The analytical process for 2009 was not dissimilar to that used in 2008: Both the Council and Commission considered the precision of MRFSS estimates at a state-by-state level; discussed the adequacy of, and equity issues related to, the 1998 landings baseline; evaluated the performance of conservation equivalency in the prior year, including the "performance-based adjustment factor" implemented for 2008; contemplated both coastwide and regional approaches to management; and, in conclusion, recommended the continued use of conservation equivalency with new modifications to NMFS for 2009.

The Commission established a requirement for 2009 that at least 50 percent of the necessary reductions for the fishing year be achieved by season closures rather than by imposing more stringent size or bag limits. This system modification was created by the Commission in response to the 2008 required "performance-based adjustment factor" having poor success in constraining landings to the required levels. The Commission requirement to call for a substantive adjustment to fishing seasons to achieve the desired individual state landing reductions is consistent with recommendations from the Council's Summer Flounder Monitoring Committee and Commission's Summer Flounder Technical Committee, both scientific advisory bodies to the Council and Commission, respectively, and NMFS. The recommendation for season closures is based on the premise that modification to seasons, either through periodic in-season closures or shortened overall seasons, are better suited to ensure a reduction in landings than are either changes in minimum fish size or possession limits. Fishery closures are noted by the Monitoring Committee and Technical Committee as having more significant compliance rates and, thus, result in near-zero landings when applied. Modifications to minimum fish size and possession

limits have demonstrated higher levels of non-compliance that minimize their effectiveness. Additionally, inter-annual fish growth may result in diminished effectiveness of minimum fish sizes if that growth keeps pace with increases in size. The requirement to adjust seasons to better ensure landing reductions represents further refinement by the Commission to ensure that state-by-state conservation equivalency functions as envisioned and achieves the required conservation objectives.

Framework Adjustment 2 to the FMP (66 FR 36208, July 11, 2001) states that conservation equivalency may only be used by area (i.e., states) if the proportional standard error of the MRFSS landings estimate, by area, is less than 30 percent. On a state-by-state basis, the 2008 MRFSS estimates of landings utilized in establishing the 2009 conservation equivalency program have proportional standard errors ranging from a high of 26.3 percent for Massachusetts to a low of 10.8 percent for New York. This is compared to 8.3 percent for the Mid-Atlantic states (New York to Virginia), combined, and 12.1 percent for the New England states (Maine to Connecticut) combined. While the proportional standard error is lower when dealing with larger data aggregations, the error levels associated with individual states are well within the acceptable error levels specified in Framework Adjustment 2 to the FMP, which implemented the regulatory structure to permit management of the summer flounder recreational fishery through conservation equivalency.

As was outlined in the 2008 response to comments (May 23, 2008; 73 FR 29990), NMFS has been aware of limitations in the MRFSS design and data for some time. It is, in fact, why NOAA commissioned the review by the National Academy of Sciences. While the review pointed out numerous areas for improvement of the MRFSS sampling design, nowhere in the assessment did the National Academy of Sciences' reviewers indicate that use of the MRFSS data at smaller spatial scales (i.e., state-by-state) was an inappropriate use of the data. Clearly, the precision of the landings estimates are improved when at an aggregate, coastwide level, but the use of the data to establish catch at a state level is not a violation of National Standard 2. The proportional standard error remains acceptable at the state-by-state level of resolution. The Commission's Technical Committee explored using the upper bound of the proportional standard error for each state's landings estimate as a means to make conservation equivalency more robust in 2008. The

Technical Committee found that such an approach was impracticable, as it would have required many states to make downward harvest adjustments in years when no such adjustment was necessary. These considerations of the accuracy and precision of MRFSS data continue to be true for the 2009 state-by-state conservation equivalency program. Moreover, the Commission has modified the conservation equivalency approach for 2009, attempting to further ensure that the system functions as envisioned.

NMFS does not disagree that the use of current MRFSS methodology and data has moved well beyond their originally intended purpose. However, as has often been stated in the past, MRFSS continues to be the only source of data currently available to assess the effort, harvest, and discards in recreational fisheries at any spatial scale. NMFS understands the frustrations and disagreements that arise with the MRFSS data set when it is used for certain management purposes and is working to improve the quality and utility of data collected for recreational fisheries management. Were MRFSS data not utilized, there would be no alternative means to quantify recreational harvest, participation levels, or to assess management measures on a coastwide or state-by-state basis for all Atlantic states in the Northeast Region. Clearly, this would present substantial complications to effectively managing the summer flounder recreational fishery and the Magnuson-Stevens Act required objective of rebuilding the summer flounder stock. NMFS's development and implementation efforts for the Marine Recreational Information Program (MRIP), designed to address the National Academy of Sciences recommendations, fishery management needs, and to be responsive to input from recreational anglers, are ongoing. MRIP is the revised recreational survey methodology and data collection designed to be responsive to the National Academy of Sciences peer-review recommendations. Detailed information on the MRIP program can be found on the NMFS Office of Science and Technology web site: <http://www.st.nmfs.noaa.gov/mrip/>. Some aspects of the MRIP program will become effective in the 2009 fishing year. In addition, a national saltwater angler registry, as required by the Magnuson-Stevens Reauthorization Act of 2006, will become effective on January 1, 2010. This registry will greatly assist recreational fishery data collection efforts.

b. The conservation equivalency system was implemented in 2001 by Framework Adjustment 2 to the Federal FMP (66 FR 36208, July 11, 2001) and the Commission's companion action Addendum III to the Commission's Summer Flounder, Scup, and Black Sea Bass FMP. Under this process, states are allowed to design management measures to achieve their specified recreational management targets which, in turn, ensures that the coastwide recreational harvest limit will be achieved. NMFS has implemented conservation equivalency, as recommended by the Council and Commission, in each year since 2001. There are New York representatives on both the Council and Commission.

The overarching process of conservation equivalency establishes a set of guidelines for states to tailor management measures that meet the conservation objectives of the FMP rather than being subject to a one-size-fits-all coastwide approach. The conservation equivalency framework is uniform and applied consistently for all states, without differentiating among U.S. citizens, nationals, resident aliens, or corporations on the basis of their state of residence. Individual states are free to develop, based on the fishery practices in their state, any combination of minimum fish size, possession limit, and fishing season to ensure that, when paired with the remaining Atlantic coastal states, the coastwide recreational harvest limit will not be exceeded. Each state's circumstance with respect to landings and overage is unique to that state and argues against the application of the same measures for each state. The Commission's Technical Committee evaluates the proposed state measures and, if sufficient, a recommendation to adopt, as functionally equivalent, the reviewed and approved measures is forwarded by the Commission to NMFS for implementation. This ensures that the conservation objectives of the FMP and the summer flounder rebuilding program are met.

To achieve conservation equivalency, the Commission, not NMFS, establishes a base recreational allocation that each state receives from the coastwide recreational harvest limit and specifies the percent reduction or liberalization in landings each state's measures must meet for each year. The conservation equivalency system does not result in a direct distribution of fishing privileges to individual states by NMFS. This allocation is not earmarked solely for the residents of an individual state; rather, any landing made in the state in question is counted against that state's recreational allocation. Fishery

participants are free to participate in multiple states, land in adjacent states, etc., and are not discriminated against based on their state of residence.

c. NMFS agrees that the status of the summer flounder stock has changed since 1998, as the stock has experienced rebuilding toward the maximum sustainable yield level. The summer distribution of summer flounder is, as stated by the commenters, primarily in inshore areas from the Mid-Atlantic Bight to southern New England. There has been an increase in both fish ages and sizes in the past decade. NMFS reiterates what was stated in response to comments in 2008: That catch levels (i.e., quotas) are established annually and that increases in stock size, distribution, and increases in fish size and age are all captured within the stock assessment framework utilized to generate quota-related information. The issue raised by NY DEC is one of allocation that functions separately from stock status. (See response to Comment 2 for additional information.)

The Commission has continued to establish the basis for the state recreational harvest allocations as the percentage of 1998 coastwide recreational landings by state. However, the Commission is at liberty to revise or amend these allocation percentages independently of the Council and/or NMFS as specific state recreational fishery percent allocations are not codified in the Federal regulations that implement the conservation equivalency program. The Commission has had significant discussion in both 2007 and 2008 about reevaluating 1998 as the baseline year. In both years, the Commission has elected to continue using 1998 coastwide landings by state as the baseline. The continued use of 1998 landings data by the Commission was not arbitrary; the intent of 1998 as the base allocation year was to establish a reference against which the effects of proposed regulations could be effectively evaluated.

d. The Commission is at liberty to explore modifications to state allocations based on angler-related statistics, number of anglers, or angler effort. To date, the Commission has elected to use the last year (1998) in which consistent measures were applied coastwide as the starting point for annual allocations. NMFS has no grounds to disapprove the recommended 2009 conservation equivalency measures recommended by the Commission because one member state of the Commission disagrees with the allocation structure utilized to derive equivalent measures. The amount of fish provided each state from the

overall recreational harvest limit is wholly a function of the Commission process.

For these reasons, NMFS contends that implementing conservation equivalency, as recommended by the Council and Commission for 2009, does not violate National Standard 4 or National Standard 2 of the Magnuson-Stevens Act.

*Comment 2:* The NY DEC also alleged that state-by-state conservation equivalency violates National Standard 4 of the Magnuson-Stevens Act, which states that conservation and management actions implemented by NMFS shall not discriminate between residents of different states. The commenter raised concerns about disparities that arise between adjacent states' management measures under the state-by-state conservation equivalency management system, specifically citing the differences between 2009 New York and adjacent New Jersey and Connecticut measures. The commenter asserts that such differences are highly inequitable, unfair, and have no linkage to conservation and recovery of summer flounder. The commenter also stated that the overages that have occurred in New York waters in recent years are not the result of cheating, but are a result of recovery of summer flounder and natural changes to the summer flounder population. Thus, the commenter states, New York is being punished unfairly for conditions beyond its control.

*Response:* NMFS disagrees that state-by-state conservation equivalency is a violation of National Standard 4 for the reasons outlined in response to comment 1c. The recreational quotas distributed to the states under the Commission's Interstate Summer Flounder FMP are based on the application of the same rule to each state; individual state quotas are based on the state's share of the overall 1998 recreational catch of summer flounder. Understandably, since recreational landings varied in each state, state recreation quotas derived from the landings would vary as well. So too would the measures in each state developed to achieve the state's conservation equivalency with the Federal coastwide measures adopted by the Council and Commission as a non-preferred alternative. In essence, differing state measures are derived from the application of the same rule to each state and designed to achieve the same result using varying quotas. The application of the same rule to a number of states that yields different results among those states due to disparate landing levels is consistent with National Standard 4.

NY DEC asserts that there is nothing that can be done to control excessive recreational harvest, given the large number of anglers paired with availability of large summer flounder in New York waters, and further insinuates that only a change in allocation will provide relief to the continued annual overages. The angler noncompliance rate with the minimum fish sizes established for New York has ranged from 5 to 13 percent during the years 1999 to 2008. NMFS contends that there are indeed measures that could be undertaken that would ensure that New York landings do not exceed their given allocation in any given year: Closed seasons during peak fishing seasons; shortened overall seasons; consideration of angler rates of noncompliance in calculating effectiveness of proposed measures; increases in enforcement efforts; supplementation of MRFSS collected data by state data-collection programs; and use of a buffer to sufficiently mitigate management uncertainty when crafting recreational management measures are all approaches that have to date, gone largely unused by NY DEC in establishing recreational summer flounder measures. NMFS contends that New York must ensure responsible, effective measures in 2009 to break the cycle wherein landings targets are consistently exceeded.

*Comment 3:* Comments by the NY DEC on managing summer flounder as a unit stock are similar to those provided on the 2008 recreational management. The comment suggests that state-by-state conservation equivalency violates National Standard 3 of the Magnuson-Stevens Act, which requires individual fish stocks to be managed as a unit throughout their ranges, to the extent practicable. This year, additional comments were added regarding the scientific reasoning for state-by-state management.

*Response:* NMFS disagrees with the commenter, as the summer flounder stock is managed as a single unit, consistent with National Standard 3. National Standard 3 does not require that management measures within the management unit be the same. Management is cooperative among the Commission, which represents individual states in the management unit, the Council, and NMFS. The stock assessment conducted in support of annual TAL setting is for the entire Northeast Region management unit for summer flounder, from Maine to North Carolina. Catch limits for the recreational and commercial fisheries are established for the entire coast. The overarching commercial TAL is

managed on a state-by-state basis, parsed by historic landings percentage by each state. Conversely, the recreational fishery may employ coastwide measures, or regional or state-by-state conservation equivalency to achieve the coastwide recreational harvest level. When state-by-state conservation equivalency is utilized for management, the individual state management measures are structured to achieve equivalency with the overarching coastwide (i.e., single management unit) recreational harvest limit. Furthermore, the regulations implementing National Standard 3 (50 CFR 600.320) clearly state that management measures need not be identical for each geographic area within the management unit.

The comment that fish do not recognize geopolitical boundaries is often used as an argument against management systems. The overarching scientific approach for managing the summer flounder stock has been previously described. An annual catch level is determined to ensure that conservation objectives are met for the year. From there, for summer flounder, the overall catch level is parsed into commercial and recreational sectors and further subdivision to states. These further subdivisions are not scientific in nature, but are allocative, and there are no requirements that the allocation be inherently biologically based, provided the sum of the allocations does not exceed the annual science-based conservation objective. As previously described, the recreational state-by-state allocation criteria utilized by the Commission is based on the last year of consistent coastwide measures (1998). The Commission is free to revisit and modify this allocation structure at any time as the individual state recreational harvest shares are not codified in Federal regulation.

*Comment 4:* NY DEC has alleged that state-by-state conservation equivalency violates National Standard 6 of the Magnuson-Stevens Act, which states that conservation and management measures shall take into account and allow for variations among, and contingencies in, fisheries, fishery resources, and catches. The basis for the commenter's assertion is that conservation equivalency does not address a northward shift in summer flounder stock distribution.

*Response:* NMFS disagrees and asserts that the commenters have misinterpreted the intent of National Standard 6, which is to ensure that an FMP management regime includes some protection against uncertainties that may arise. National Standard 6 directs

FMPs to have a suitable buffer, in favor of conservation, to deal with uncertainty, which may also be stated as a conservative approach. Examples provided in NMFS guidance on National Standard 6 (50 CFR 600.336) include reductions in optimum yield, establishment of reserves, and adjustable management techniques to compensate for changes that occur during a fishing year as suitable buffers to mitigate uncertainty.

In regard to conservation equivalency, a summer flounder stock assessment is conducted annually, and fully accounts for, among other things, stock distribution, changes in stock size, and fishery removals. The stock assessment does fully account for changes in stock dynamics and distribution in providing the basis for setting the annual coastwide TAL, which is then divided among the recreational and commercial fisheries.

Further, both the states and NMFS are able to monitor recreational harvests during the fishing season, and both can take corrective or closure actions to ensure that mortality objectives or harvest targets are not exceeded. For these reasons, NMFS finds that the use of state-by-state conservation equivalency complies with National Standard 6 of the Magnuson-Stevens Act.

*Comment 5:* NY DEC commented that state-by-state conservation equivalency does not appear to be conserving the fishery and that coastwide measures would make better use of the available data and provide a new baseline year for future landings reductions. NY DEC has requested that NMFS implement coastwide measures instead of the Council and Commission's preferred alternative for state-by-state conservation equivalency.

*Response:* NMFS has been continually concerned with what was described by NY DEC as the states' practices of adjusting recreational measures to maximize harvest within the individual state allocation or, more plainly stated, conducting analysis that gets as close as possible to the landings limit without exceeding, on paper, said limit. Many of NMFS's concerns, raised in correspondence from NMFS Northeast Regional Administrator Patricia Kurkul and former Assistant Administrator Dr. William Hogarth, have been quoted often in the NY DEC comments.

The conservation equivalency system has not remained static since NMFS first raised concerns that the system must be improved to provide a higher likelihood of constraining landings to the established recreational harvest limit. There have been positive advances in

how the conservation equivalency analysis is conducted and the stipulations that the Commission has required of member states, all of which are designed to improve the performance of the system and ensure conservation objectives are met. NMFS has given deference to the states through the Commission process to continue to explore measures that improve the performance of conservation equivalency, provided the requirements of Framework Adjustment 2 to the FMP, the overarching FMP regulations, the Magnuson-Stevens Act, and other applicable law are satisfied in so doing. NMFS continues to encourage individual states, though the Commission, to conduct analyses that provide a buffer between expected landings and individual states landing limits in the absence of more qualitative means of improving conservation equivalency.

As noted in the comment, the Commission required a "performance-based adjustment factor" for the 2008 fishery, as well as requiring the use of a predicted average fish weight. This system further reduced states' 2008 targets by a factor that was derived by taking the average of yearly harvest-to-target performance by state from 2001–2007. As indicated in the comment by NY DEC, this system did not ensure that the 2008 recreational management targets were not exceeded by a number of states.

For 2009, the Commission is requiring a new refinement to the conservation equivalency system: States that have required reductions to meet their 2009 landings targets must ensure that at least half of the reduction is the result of modification to fishing seasons. NMFS contends that this is a continued demonstration of the Commission's willingness to make substantive improvements in the conservation equivalency management system. Were the "performance-based adjustment factor" recommended for 2009 or no modification of how states set minimum fish size, possession limit, and fishing season required by the Commission, the approval of state-by-state conservation equivalency would have been difficult for NMFS to justify. This is because of the past repetitive failures of the unmodified conservation equivalency program and NMFS's need to rebuild the summer flounder stock by 2013.

For NMFS to disapprove the Council's recommendation and substitute alternative measures, in this case coastwide management measures, NMFS must reasonably demonstrate that the recommended measures are either inconsistent with applicable law

or otherwise demonstrate that the conservation objectives of the FMP will not be achieved by implementing the recommendation in question. NMFS does not find the Council and Commission's recommendation are legally suspect or incapable of achieving the FMP's conservation objectives in light of the reduction in fishing season mandated by the Commission for use in 2009.

However, NMFS remains concerned that there is little margin for error in the remaining 3 years of the summer flounder rebuilding plan (2010–2012). Therefore, recreational landings will be monitored in season and, if necessary to ensure the mortality objectives are not compromised for 2009, an inseason closure of the EEZ may occur. Any such closure action would be announced through multiple media outlets, including publication of a notice in the **Federal Register**.

Use of information on a coastwide basis would improve the precision of the MRFSS estimates and would, as indicated by the commenters, provide a new baseline year of landings for future use. The level of precision provided under state-by-state conservation equivalency is not of insufficient resolution for management (see response to Comment 1) and, should states have concerns about the precision of landings estimates at a state level, NMFS recommends establishing recreational management measures that provide a sufficient buffer to mitigate for any loss of precision.

NMFS is implementing, through this final rule, state-by-state conservation equivalency as recommended by both the Council and Commission for the reasons previously outlined in the preamble to this rule. Under conservation equivalency, each state has implemented a unique minimum fish size, possession limit, and fishing season tailored to ensure that these measures result in recreational landings equivalent to the coastwide recreational harvest level.

*Comment 6:* NY DEC requested that the 2008 landings estimate for New York be adjusted from 600,000 fish to 565,000 fish. The change in number is a result of the final 2008 MRFSS catch data being available as opposed to the estimated landings used during the Council and Commission recreational management measures development discussion.

*Response:* The individual state landings limits, including the percent reduction from the previous year landings estimate and target number of fish to be landed, are specified through the Commission process. Estimated

landings are often utilized as final prior year landings estimates are not available until the first quarter of the following year. The Commission's Summer Flounder Management Board would need to approve measures for New York designed to achieve any modified 2009 landings target. NMFS recommends that NY DEC pursue this discussion with the Commission and Summer Flounder Management Board.

*Comment 7:* One commenter stated that the 2009 recreational management measures are unfair to the financial lower class, further stating that if one has money and he/she can buy a permit, they can presumably participate in the recreational fisheries for summer flounder, scup, or black sea bass.

*Response:* The Council conducted analysis consistent with Executive Order 12898, which directs each Federal agency to achieve environmental justice as part of its mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of its programs, policies, and activities on minority populations and low-income populations. Council analysis indicated that 28 percent of marine recreational anglers fish for reasons other than recreation and one-third rely on catching marine resources as a cost-saving food source or supplement to income. The black sea bass and scup possession limits are unchanged for 2009. Under conservation equivalency for summer flounder, the management measures should permit the fishery to operate in a manner that dissipates, to the extent practicable, adverse effects on the angling population while ensuring that conservation objectives are met. The Council concluded that, based on this analysis contained in the EA/RIR/IRFA document (see **ADDRESSES** for information on obtaining the source document), the actions of the 2009 recreational management measures were not expected to cause disproportionately high adverse or economic effects on low-income populations.

Regarding the commenter's second point, there are currently no Federal permit fees for private anglers or for individuals to obtain a Federal party/charter permit.

#### **Classification**

The Administrator, Northeast Region, NMFS, determined that this final rule implementing the 2009 summer flounder, scup, and black sea bass recreational management measures is necessary for the conservation and management of the summer flounder, scup, and black sea bass fisheries, and

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

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

Included in this final rule is the FRFA prepared pursuant to 5 U.S.C. 604(a). The FRFA incorporates the economic impacts described in the IRFA, a summary of the significant issues raised by the public comments in response to the IRFA, NMFS's responses to those comments, and a summary of the analyses completed to support the action. Copies of the EA/RIR/IRFA and supplement are available from the Council and 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.

#### *A Summary of the Significant Issues Raised by the Public Comments in Response to the IRFA, a Summary of the Assessment of the Agency of Such Issues, and a Statement of Any Changes Made in the Proposed Rule as a Result of Such Comments*

A summary of the comments received and NMFS's responses thereto is contained in the preamble of this rule. None of those comments addressed specific information contained in the IRFA economic analysis. One comment received stated that the 2009 recreational management measures were unfair to the financial lower class. See response to Comment 7 in the Comment and Responses section. No changes have been made from the proposed rule as a result of the comments received.

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

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.

#### *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*

*No-action alternatives.* The economic analysis conducted in support of this action assessed the impacts of the various management alternatives. In the EA, the no action alternative for each species is defined as the continuation of the management measures as codified for the 2008 fishing season. The no-action measures were analyzed in Alternative 2 for each species in the Council's EA/RIR/IRFA.

For summer flounder, state-specific implications of the no-action (coastwide) alternative of a 20.0-inch (50.80-cm) minimum fish size, a two-fish possession limit, and a May 1 through September 30, 2009, fishing season would not achieve the mortality objectives required, and, therefore, cannot be continued for the 2009 fishing season. Similarly, the no-action alternative for black sea bass (a 12.0-inch (30.48-cm) minimum fish size, a 25-fish possession limit, and no closed fishing season) would result in fishing mortality that exceeds the level established for 2009 and, therefore, cannot be continued for the 2009 fishing season. This rule implements the no-action alternative for scup (i.e., *status quo*). The implications of so doing are not substantial; the management measures remain the same as those in place for 2008. Council analysis indicates that minimal impact may occur even with continuation of the *status quo* scup measures. These impacts would likely result from changes in year-to-year costs associated with fishing for scup.

*Summer flounder alternatives.* In seeking to minimize the impact of recreational management measures (minimum fish size, possession limit, and fishing season) on small entities (i.e., Federal party/charter permit holders), NMFS is constrained to implementing measures that meet the conservation objectives of the FMP and Magnuson-Stevens Act rebuilding program requirements. As previously indicated, the no-action alternative for summer flounder was considered but rejected by the Council, and subsequently NMFS, on the grounds that analysis indicated it would not ensure that the 2009 mortality objectives would be met. The remaining alternatives examined by the Council and forwarded for consideration by NMFS consisted of the preferred alternative of state-by-state conservation equivalency with a

precautionary default backstop, and the non-preferred alternative of coastwide measures. These were alternatives 1 and 2, respectively, in the Council's EA/RIR/IRFA. These two alternatives were determined by the Council analyses to satisfy the 2009 conservation objectives for the recreational fishery, i.e., analysis indicated that implementation of either would constrain recreational landings within the 2009 recreational harvest limit. Therefore, either alternative recreational management system could be considered for implementation by NMFS, as the critical metric of satisfying the regulatory and statutory requirements would be met by either.

Next, NMFS considered the recommendation of both the Council and Commission. Both groups recommended implementation of state-by-state conservation equivalency, with a precautionary default backstop. The recommendations of both groups were not unanimous: New York representatives dissented and voted against conservation equivalency in the Commission proceedings, and the Council representatives from New York likewise voted against continued recommendation of conservation equivalency in 2009.

The conservation equivalency approach allows states some degree of flexibility in the specification of management measures, unlike the application of one set of uniform coastwide measures. The degree of flexibility available to states under conservation equivalency is constrained to a combined suite of minimum fish size, possession limit, and fishing season that will achieve the required percent reduction required for 2009 (i.e., achieve the conservation objectives). This provides the opportunity for states to construct measures that achieve the conservation objectives while providing a state-specific set of measures in lieu of the one-size-fits-all coastwide measure. States that fail to provide measures, or whose measures do not achieve the required reduction, are assigned the more restrictive precautionary default measures. For 2009, the Commission required that states obligated to reduce their 2009 landings under the conservation equivalency program do so by manipulating the fishing season through either periodic fishery closures or shortened overall fishing seasons. Specifically, the Commission required that at least 50 percent of any required reduction in landings was to occur as the result of season manipulation, with the remainder of any reduction achieved through modification to minimum fish size and/or possession limits. This



recommendation follows advice provided by the Commission's Technical Committee and Council's Summer Flounder Monitoring Committee that modification to fishing season is a more effective means of ensuring landings reduction than are either changes to minimum fish size or possession limit.

At this time, it is not possible to determine the precise economic impact on small entities under conservation equivalency. The specific measures

adopted for each state were only made available to NMFS from the Commission on May 7, 2009, and were unavailable for analysis during this rulemaking. Because the recreational fisheries in many states will have begun by the time this rule is effective, NMFS has elected to forego quantitative analysis of the specific conservation equivalency measures as implemented by the individual states, as the need to have measures in place in a timely fashion outweighs the benefits of delaying

publication of this rule to complete further analysis. However, economic impact is likely to be proportional to the level of landings reductions required for each individual state. As such, the greater the percent reduction required for states in 2009 (Table 4), the greater the potential for higher economic impacts on small entities in comparison to coastwide measures dependent on the configuration of management measures ultimately selected.

TABLE 4. 2009 STATE-BY-STATE PERCENT SUMMER FLOUNDER RECREATIONAL FISHERY LANDINGS REDUCTION REQUIRED UNDER FRAMEWORK ADJUSTMENT 2 CONSERVATION EQUIVALENCY PROGRAM.<sup>1</sup>

State	MD	RI	CT	NY	NJ	DE	MD	VA	NC
Percent Required Reduction	24	42	35	39	7	0	51	0	0

<sup>1</sup>Based on a 70.4-percent reduction from 1998 landings and a 12.0-percent reduction from 2008 landings.

For NMFS to disapprove the Council's recommendation for conservation equivalency and substitute coastwide management measures, NMFS must reasonably demonstrate that the recommended measures are either inconsistent with applicable law or demonstrate that the conservation objectives of the FMP will not be achieved by implementing conservation equivalency. NMFS does not find the Council and Commission's recommendation to be inconsistent with the implementing regulations of the FMP found at § 648.100 or the Magnuson-Stevens Act. Furthermore, NMFS finds that the Commission requirement to manipulate fishing seasons for at least half of the state's 2009 reductions is a novel, continued demonstration to try and improve the performance of conservation equivalency. In 2008, the Commission implemented an additional performance based adjustment that further increased several state's required reductions for the year. This performance-based adjustment did not prevent the 2008 recreational harvest limit from being exceeded. Accordingly, the Commission has required a different approach for 2009, with the expectation that it will be more effective than the system in place for 2008.

The use of coastwide management measures was considered by NMFS. In fact, as commenters stated in response to the proposed rule, NMFS had previously advocated for a coastwide approach in the early stages of past years' recreational fishery management measures development. The economic impacts on small entities under the coastwide measures management system would vary in comparison to the conservation equivalency system

dependent on the specific state wherein the small entities operate. In the Council's provided analysis, closed seasons typically result in a higher economic impact to small entities than do increases in minimum fish sizes or reduction in possession limits. The reason for this is that angler success begins to decline at higher minimum fish size and higher possession limits, yielding lower return on the effectiveness of implementing such measures. Closed seasons, however, are unmistakable in their effectiveness as they permit no harvest irrespective of fish size or possession limit, provided there are no compliance issues. Closed seasons also are typically more easily enforceable. The interplay between the three management measures and the inability to quantitatively assess the impacts of the state's implemented conservation equivalency measures make definitive statements regarding impacts difficult to provide. Both fishery independent and dependent data suggest that larger summer flounder are less common in the southern portion of the management range; therefore, implementation of coastwide measures may have a more profound economic impact on small entities operating in the southern portion of the management area if the minimum fish size is set larger than fish that are typically available in southern states. Conservation equivalency is generally expected to mitigate the economic impact in states with lower required percent reductions for 2009 compared to the 12-percent coastwide reduction that would be necessary were coastwide measures employed. In those states, management measures can be tailored to suit the expressed needs of both small

entities and other recreational fishery participants while achieving the required conservation equivalency percent reduction. Conversely, coastwide measures may yield lower economic impacts for states with the percent reductions greater than the total coastwide level of reduction required for 2009 by permitting smaller minimum fish sizes paired with slightly lower possession limits, and comparable fishing seasons than would be required to be implemented under conservation equivalency.

NMFS is implementing the Council and Commission's recommended state-by-state conservation equivalency measures for the reasons previously stated: (1) The state-by-state conservation equivalency management system has again been modified, by the Commission, from the previously utilized methodology that reduced the magnitude of exceeding the recreational harvest limit in 2008 but ultimately did not ensure landings remained below the desired level; and (2) NMFS finds no compelling reason to disapprove the Council and Commission's recommended 2009 management system, as the analysis provided by the Commission's Technical Committee demonstrates that the improved conservation equivalency system will provide a high likelihood that the 2009 recreational harvest limit will not be exceeded. To further ensure that the 2009 recreational harvest limit is not exceeded, NMFS is prepared to close the EEZ during the fishing season if harvest projections indicate that the 2009 recreational harvest limit may be exceeded before the end of the calendar year.

*Black sea bass alternatives.* Similar to summer flounder, the options available

for black sea bass recreational management measures are constrained to selecting a suite of minimum fish size, possession limit, and fishing season measures that achieves the annual conservation objectives. In this case, the conservation objective is a level of recreational black sea bass landings that is below the 2009 recreational harvest level. Therefore, the selection of measures available to mitigate the economic impact on small entities is constrained to those measures that will permit the maximum amount of recreational landings while achieving the specified conservation objectives for the fishing season.

For 2009, a coastwide reduction in black sea bass landings of 10.0 percent is necessary to achieve the conservation objective. The Council's EA/RIR/IRFA evaluated alternatives 1 and 3 for black sea bass, which would achieve this objective. The Council recommended, and NMFS is implementing, Alternative 1, consisting of a half-inch increase in minimum fish size from 12.0 to 12.5 inches (30.48 cm to 31.75 cm) and maintenance of the *status quo* 25-fish possession limit and year-round season (January 1–December 31, 2009), because it is projected to achieve a 12.0-percent reduction in black sea bass recreational landings in 2009. Alternative 3, consisting of a 12.0-inch (30.48-cm) minimum fish size, a 25-fish possession limit, and fishing seasons January 1 through May 15 and June 15 through December 31, 2009, is projected to reduce landings by 13.3 percent from 2008 levels. The measures of this alternative are more restrictive than necessary to achieve the conservation objectives for 2009 and were not recommended by either the Council or Commission. Therefore, this rule implements the increased minimum fish size contained in Alternative 1, as recommended by both the Council and Commission.

*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 website: <http://www.nero.noaa.gov>.

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

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: June 18, 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 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 of the introductory text 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 inches (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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