

notification published in the **Federal Register**.

- (i) [Reserved]
- (ii) [Reserved]
- (iii) [Reserved]
- (iv) [Reserved]

(4) *Possession Limits*. (i) *Scallops*. A vessel issued a NE multispecies permit and a general category scallop permit that is fishing in an approved SAP under § 648.85 under multispecies DAS and that has not enrolled in the LAGC Access Area fishery, is prohibited from possessing scallops. An LAGC scallop vessel authorized to fish in the Access Areas specified in § 648.59(a) through (e) may possess scallops up to the possession limit specified in § 648.52(a).

(ii) *Other species*. Unless issued an LAGC scallop permit and fishing under an approved NE multispecies SAP under NE multispecies DAS, an LAGC IFQ vessel fishing in the Access Areas specified in § 648.59(a) through (e) is prohibited from possessing any species of fish other than scallops and monkfish, as specified in § 648.94(c)(8).

(5) *Number of trips*. An LAGC IFQ scallop vessel may not fish for, possess, or land scallops in or from the Access Areas specified in § 648.59(a) through (e) after the effective date of the notification published in the **Federal Register**, stating that the total number of trips specified in § 648.59(a)(3)(ii), (b)(5)(ii), (c)(5)(ii), (d)(5)(ii), and (e)(4)(ii) have been, or are projected to be, taken by LAGC IFQ scallop vessels.

10. In § 648.62, paragraph (b)(1) is revised to read as follows.

**§ 648.62 Northern Gulf of Maine (NGOM) scallop management area.**

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(b) \* \* \*

(1) *NGOM TAC*. The TAC for the NGOM is 70,000 lb (31.8 mt) for the 2010 fishing year.

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**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

**50 CFR Part 648**

[Docket No. 0907211158-91159-01]

RIN 0648-AY04

**Fisheries of the Northeastern United States; Recreational Management Measures for the Summer Flounder, Scup, and Black Sea Bass Fisheries; Fishing Year 2010**

**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 2010 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 27, 2010.

**ADDRESSES:** You may submit comments, identified by 0648-AY04, by any one of the following methods:

- Electronic Submissions: Submit all electronic public comments via the Federal eRulemaking Portal <http://www.regulations.gov>
- Fax: (978) 281-9135, Attn: Comments on 2010 Summer Flounder, Scup, and Black Sea Bass Recreational Management Measures, 0648-AY04
- 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 2010 Summer Flounder, Scup, and Black Sea Bass Recreational Measures, 0648-AY04."

Instructions: No comments will be posted for public viewing until after the comment period has closed. 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 (enter N/A in the required

fields, if you wish to remain anonymous). You may submit attachments to electronic comments 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 for the recreational management measures are available from Daniel Furlong, Executive Director, Mid-Atlantic Fishery Management Council, 800 N. State Street, Suite 201, Dover, DE 19901. 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° E. 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 Federal waters of 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 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 before ultimately implementing measures for Federal waters.

Quota specifications for the 2010 summer flounder, scup, and black sea bass fisheries were published on December 22, 2009 (74 FR 67978), and became effective January 1, 2010. The black sea bass specifications (i.e., recreational harvest limit and commercial quota) were increased by emergency rule on February 10, 2010 (75 FR 6586). Based on the specifications, the 2010 coastwide recreational harvest limits are 8,586,440 lb (3,896 mt) for summer flounder, 3,011,074 lb (1,366 mt) for scup, and 1,830,390 lb (830 mt) for black sea bass. The specification rules did not establish recreational measures, in large part because a substantial portion of 2009 recreational catch data was not yet 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. All

landings projection data are based on data from the Marine Recreational Fisheries Statistics Survey (MRFSS) Waves 1–4 (January–August) unless otherwise indicated.

### Summer Flounder

Recreational landings for 2009 were estimated to have been 6.40 million lb (2,903 mt) and were 12 percent below the 2009 recreational harvest limit of 7.16 million lb (2,248 mt). The 2010 coastwide harvest limit is 8.59 million lb (3,896 mt), a 20-percent increase from the 2009 harvest limit. The Council and Commission have recommended the use of conservation equivalency to manage the 2010 summer flounder recreational fishery.

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 provided by the Commission, 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 that either on an annual basis 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 for use in Federal waters.

If conservation equivalency is recommended, and following confirmation that the proposed state measures developed through the Commission's technical and policy review processes 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 when recommending conservation equivalency. 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 would not exceed the harvest limit for that state. The precautionary default measures are defined as the set of measures that would not exceed the harvest limit for any state on a coastwide basis.

In previous years when conservation equivalency has been jointly recommended by the Council and Commission, NMFS has provided a description of the management targets, technical, and other Commission-imposed requirements for states to follow when designing state-specific equivalent measures. The process that results in selection of appropriate data and analytic techniques for technical review of potential state conservation equivalent measures and the process by which the Commission evaluates and recommends proposed conservation equivalent measures is wholly a function of the Commission and its individual member states. Inclusion of such descriptions may add confusion and imply that the development, evaluation, and recommendation process is part of the combined Council and NMFS responsibilities of the conservation equivalency system. Individuals seeking information regarding the specific state measure development process or the Commission process should contact the marine fisheries agency in the state of interest, the Commission, or both.

Once states select their final 2010 summer flounder management measures through their respective development, analytical, and review processes and submit them to the Commission, the Commission will conduct further independent review and evaluation of the state-submitted proposals, ultimately notifying NMFS as to which individual state proposals have been approved or disapproved. NMFS has no input or authority in the state or Commission management measure development and review process. However, NMFS retains the final authority either to approve or to disapprove the use of conservation equivalency in place of the coastwide measures, and will publish its

determination as a final rule in the **Federal Register** to establish the 2010 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 precautionary default measures recommended by the Council and Board during their joint December 2009 meeting are for a 21.5-inch (54.61-cm) minimum fish size, a possession limit of two fish, and an open season of May 1 through September 30, 2010.

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 2010 are a 19.5-inch (49.53-cm) minimum fish size, a possession limit of two fish, and an open season from May 1 to September 30, 2010.

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 not approved 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 2010 scup recreational harvest limit is 3.01 million lb (1,366 mt), a 16-percent increase from the 2009 recreational harvest limit of 2.59 million lb (1,175 mt). Recreational landings in 2009 are estimated to have been 4.01 million lb (1,819 mt), exceeding the recreational harvest limit by 55 percent. Because of this overage, recreational landings must be reduced by 30 percent from 2009 levels for the 2010 fishery to stay within the established recreational harvest limit.

However, the Council initially recommended measures that would reduce 2010 landings by 35 percent to remain within the 2010 recreational harvest limit based on a preliminary landings estimate that was slightly

higher. The Council's recommendation was made in early December and, subsequent to the Council's recommendation, and subsequent additional analysis of the 2009 recreational landings has been conducted by a technical working group at the request of the Council, Commission, and NMFS. The working group was tasked to re-examine a specific situation regarding anomalies from the MRFSS Wave 4 Massachusetts party vessel sector estimate. The analysis conducted by this working group resulted in a revised Wave 4 estimate that changed the level of reduction from 2009 landing levels required for 2010 from 35 to 30 percent. As a result, the Council's preferred alternative for an 11.0-inch (27.94-cm) minimum fish size, a 10-fish per person possession limit, and open fishing seasons of January 1–February 28 and June 12–September 26 is more restrictive than necessary to remain within the 2010 recreational harvest limit.

The Council also considered an alternative that is projected to provide the revised 30-percent reduction from 2009 landings in 2010: A 10.5-inch (26.67-cm) minimum fish size; a 10-fish per person possession limit; and an open season of June 6–September 26. Consistent with the revised catch analysis for 2009, NMFS proposes to implement the Council's non-preferred suite of measures that achieve the 30-percent reduction in 2010 landings from 2009 levels for Federal waters in the 2010 scup recreational fishery: A 10.5-inch (26.67-cm) minimum fish size; a 10-fish per person possession limit; and an open season of June 6–September 26. NMFS acknowledges that the Commission meeting has indicated its intent to continue managing the recreational scup fishery through a Commission-based conservation equivalency program that has no comparable measures in the Federal FMP. Preliminary information presented during the February 2010 Commission indicated that the Commission's 2010 scup recreational measures for state waters may differ from the measures of this proposed rule. Very little of the scup recreational harvest comes from the Federal waters of the EEZ. The total scup recreational harvest from Federal waters for 2008 was approximately 4 percent.

### Black Sea Bass

The process for 2010 black sea bass recreational management measures has been complicated by many unusual, and at times, unforeseeable events. Recreational landings in 2009 were

estimated to have been between 1.94 and 3.31 million lb (882 and 1,501 mt), based on evaluation of actual landings data through August and projections of final 2009 landings. Either scenario exceeds the 2009 recreational harvest limit of 1.14 million lb (517 mt). NMFS implemented an emergency rule (74 FR 51092; October 5, 2009) to close Federal waters of the EEZ to black sea bass recreational fishing for a period of 180 days, based on recreational landings data through August 2009, because of the magnitude of the overage. When the closure was implemented in October 2009, the 2010 recreational harvest limit had not yet been finalized, development of recreational management measures had not yet begun, and data on final recreational landings for 2009 were incomplete. While issuing the closure, NMFS anticipated that the magnitude of the 2009 overage was such that a reduction in landings from 2009 levels in 2010 would be likely. Thus, the fishery was closed for 180 days, as opposed to implementing a closure through the end of the fishing year, December 31, 2009. It was expected that in the interim between the start of the closure on October 5, 2009, and the end of the 180-day closure period, the typical process for establishing both the 2010 recreational harvest limit and recreational management measures would occur. However, the process has been atypical, for the following reasons.

In December 2009, the Council and Commission developed recommended management measures for the 2010 recreational fishery. The measures were designed to achieve a 66-percent reduction in landings from projected 2009 levels, which was consistent with the black sea bass recreational harvest limit of 1,137,810 lb (516 mt) that had been adopted by the Council and Commission in August 2009. The 66-percent reduction was calculated using 2009 landings data from Waves 1–4 (January–August), and projected landings for Waves 5 and 6 (September–December), as data for Waves 5 and 6 were not available at the time the Council and Commission met.

On December 22, 2009, NMFS published a final rule implementing the specifications for the 2010 fishing year. These specifications, effective January 1, 2010, included total allowable landings (TAL) for black sea bass of 2.3 million lb (1,043 mt), of which 1,137,810 lb (516 mt) was allocated to the recreational fishery as the recreational harvest limit. This TAL and recreational harvest limit was consistent with the August 2009 recommendations of the Council and Commission.

In early January 2010, the Council's Scientific and Statistical Committee (SSC) convened to reconsider its previous recommendations regarding the Acceptable Biological Catch (ABC) for black sea bass for the 2010 fishing year. The SSC concluded that the ABC for black sea bass could be increased from 2.71 million lb (1,229 mt) to 4.5 million lb (2,041 mt), which was consistent with catch levels established for 2008.

In response, on January 15, 2010, the Council submitted a letter to NMFS requesting that the agency take emergency action to increase the black sea bass TAL for 2010 consistent with the revised ABC. The letter requested that NMFS increase both the 2010 commercial quota and recreational harvest limit for black sea bass.

On February 10, 2010, in response to the Council's request, NMFS published an emergency rule to increase the 2010 black sea bass TAL from 2.3 million lb (1,043 mt) to 3.7 million lb (1,678 mt), and to increase the recreational harvest limit to 1,830,390 lb (830 mt).

In mid-February 2010, the Commission and Council met separately to reconsider the recreational fishery management measures developed in December 2009. The measures adopted in December 2009 were designed to achieve a 66-percent reduction in black sea bass landings relative to 2009, but with the increased recreational harvest limit implemented in the emergency rule, only a 44-percent reduction appeared necessary. Both the Council and Commission retained the status quo minimum fish size of 12.5 inches (31.75 cm) and 25-fish bag limit, but the two groups adopted different seasons. The Commission adopted a single season from May 22–September 12, and the Council recommended a split season from May 22–August 8 and September 4–October 4. Both sets of measures are projected to achieve a 44-percent reduction in landings.

Information on final 2009 black sea bass recreational total landings are not yet available. However, since the Council and Commission reconsidered 2010 black sea bass recreational management measures based on a 44-percent reduction in landings, the preliminary 2009 MRFSS Wave 6 (November–December) data have become available. The EEZ was closed for the entire 2009 Wave 6 period, and landings from 2009 Wave 6 are 75 percent lower than 2008 Wave 6 landings. The EEZ was also closed from October 5–31, 2009, during Wave 5 (September–October), but data on Wave 5 are not yet available.

The projection methodology utilized by both the Council and Commission that indicated a 44-percent reduction in landings was necessary used 2008 Wave 6 data and assumed that the EEZ closure had no effect on landings during the October 5–December 31 period (i.e., partial Wave 5 and all of Wave 6). This assumption was reasonable at the time, given that: (1) The Council and Commission anticipated that some amount of landings would continue to occur in state waters that remained open; and (2) preliminary Wave 5 data were expected to be available in mid-December to provide a more informed assessment of the closure impacts. However, issues related to the adequacy of survey sample size for the 2009 Wave 5 sampling period required additional analyses to be conducted by the NMFS Office of Science and Technology to ensure suitability of the 2009 Wave 5 estimate. Final data for Wave 5 are expected in mid-April 2010.

NMFS has conducted additional analysis of the 2009 projected landings, making use of the preliminary 2009 Wave 6 data and modifying the assumptions regarding black sea bass landings during the October 5–31, 2009, EEZ closure timeframe. It is evident from this analysis that the 2009 black sea bass landings are lower than previously projected; however, in the multiple projection scenarios conducted, the 2009 recreational harvest limit was still exceeded and a reduction in 2010 landings still appears to be necessary. These alternative projections suggest that the percent reduction in landings from 2009 levels is less than the 44 percent in the Council and Commission projection analysis.

To ensure that final 2010 black sea bass recreational management measures are promulgated in a timely fashion and make use of the best available information regarding 2009 landings, NMFS is proposing the following course of concurrent actions:

1. NMFS has extended the existing recreational fishery closure in the EEZ until 11:59 p.m., May 21, 2010. This will ensure that the 2010 recreational fishery will begin no earlier than the Council and Commission preferred start date of May 22, 2010.

2. NMFS will analyze 2009 Wave 5 and final 2009 black sea bass recreational landings data as soon as they are available. These data are expected in mid-April. Using these data will provide the best information possible on the amount of reduction required in the 2010 fishery.

3. NMFS proposes to implement the Council and Commission-recommended minimum fish size of 12.0 inches (31.75

cm), possession limit of 25 fish per person, and season starting date of May 22, 2010. The final season length will be determined by the updated analysis of final 2009 landings data and implemented in the final rule for this action, following analysis and public comment.

It is not practicable to hold this proposed rule for 2010 black sea bass recreational management measures until after final 2009 landings data are available. In regards to season length, NMFS will consider the amount of potential liberalization possible based on the final 2009 landings data and will, to the extent practicable, extend the fishing season from May 22 onward. Under the Council's current preferred alternative, a 44-percent reduction in landings is provided by a May 22–August 8 and September 4–October 4 fishing season; therefore, liberalization could involve the addition of days from August 9–September 3 and/or from October 5 onward, as permitted by any revision to the required reduction in 2010 landings resulting from final 2009 landings data analysis. Through this proposed rule, NMFS is requesting specific comment from the Council, Commission, and interested public on how to best extend the fishing season, should the final analysis warrant that. The full extent of potential season length will not be known until final 2009 landings data can be analyzed. NMFS expects that a final rule to implement the 2010 black sea bass recreational season will be issued and effective well in advance of the Commission's recommended August 8, 2010, mid-season closure.

#### 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 in the preamble and in the **SUMMARY** of this proposed rule. 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 only regulated entities affected by this action are party/charter vessels issued a Federal permit for summer flounder, scup, and/or black sea bass, and so the IRFA focuses upon the expected impacts on this segment of the affected public. These vessels are all 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 fishing opportunities by individual recreational anglers may be impacted by this action, they are not considered small entities under the RFA.

The Council estimated that the proposed measures could affect any of the 948 vessels possessing a Federal charter/party permit for summer flounder, scup, and/or black sea bass in 2009, the most recent year for which complete permit data are available. However, only 328 vessels reported active participation in the recreational summer flounder, scup, and/or black sea bass fisheries in 2008, the most recent year for which complete fishing vessel trip reports (i.e., logbooks) are available.

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; (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 impacts of the proposed action on small entities (i.e., federally permitted party/charter vessels in each state in the Northeast region) were analyzed, assessing potential changes in gross revenues for all 24 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 2009 that would have been affected by the proposed 2010 management measures. All 2009 party/charter fishing trips that would have been constrained by the proposed 2010 measures in each state were considered to be affected trips. MRFSS data indicate that anglers took 34.66 million fishing trips in 2009 in the Northeastern U.S., and that party/charter anglers accounted for 1.41 million of the angler fishing trips, private/rental boat trips accounted for 17.34 million angler fishing trips, and shore trips accounted for 15.91 million recreational angler fishing trips.

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 2010.

Total economic losses to party/charter vessels were then estimated by multiplying the number of potentially affected trips in each state in 2010, under the two hypothetical scenarios, by the estimated average access fee of \$62.38 paid by party/charter anglers in the Northeast in 2009. Finally, total economic losses were divided by the number of federally permitted party/charter vessels that participated in the summer flounder fisheries in 2009 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 2010. The analysis assumed that angler effort and catch rates in 2010 will be similar to 2009.

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 97 percent of summer flounder and 96 percent of scup landings in 2008, 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 2010. Reductions in fishing effort of this magnitude in 2010 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 2010.

#### **Impacts of Summer Flounder Alternatives**

The proposed action for the summer flounder recreational fishery would limit coastwide catch to 8.59 million lb (3,896 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.

Because states have yet to develop specific 2010 management measures, it is not yet possible to analyze the potential impacts of Summer Flounder Alternative 1, which would implement conservation equivalency. However, conservation equivalent recreational management measures allow each state to develop specific summer flounder recreational measures, which would allow the fishery to operate in each state during critical fishing periods while still achieving the conservation objectives. This should help mitigate potential adverse economic impacts. Therefore, the Council concluded in its analysis that Summer Flounder Alternative 1 would likely have the lowest potential adverse impact of the alternatives considered for the 2010 summer flounder recreational fishery.

Because states have a choice of developing specific measures in the Commission's conservation equivalency process, it is expected that the states would adopt conservation equivalent measures that result in fewer adverse economic impacts than the more restrictive proposed precautionary default measures (i.e., 21.5-inch (54.61-cm) minimum fish size, a possession limit of two fish, and an open season of May 1 through September 30, 2010). The precautionary default is a sub-alternative that may be implemented under specific conditions, as outlined in the preamble of this rule. As such, the Council conducted analysis of the potential impact of implementing precautionary default measures in 2010. Under the precautionary default measures, impacted trips are defined as trips taken in 2009 that landed at least one summer flounder smaller than 21.5 inches (54.61 cm), landed more than two summer flounder, or landed summer flounder during closed seasons. The analysis concluded that implementation of precautionary default measures could affect 0.63 percent of the party/charter vessel trips in the Northeast, including those trips where no summer flounder were caught.

The impacts of Summer Flounder Alternative 2 for coastwide measures, which would be implemented by NMFS if conservation equivalency is disapproved in the final rule, i.e., a 19.5-inch (49.53-cm), minimum fish size, a two-fish possession limit, and a fishing season from May 1 through September 30, were evaluated in the Council's analysis. Impacted trips were defined as individual angler trips taken aboard party/charter vessels in 2009 that landed at least one summer flounder smaller than 19.5 inches (49.53 cm), that landed more than two summer flounder or landed summer flounder during closed seasons. The analysis concluded that the measures would affect 0.56 percent of the party/charter vessel trips in the Northeast.

Continuation of the summer flounder coastwide management measures (i.e., a 19.5-inch (49.53-cm) minimum fish size, two-fish possession limit, and a May 1 through September 1 fishing season) is expected to constrain 2010 landings to the recreational harvest limit; however, continuation of those measures would be more restrictive than necessary under the summer flounder rebuilding plan requirement established 2010 recreational harvest limit.

#### **Impacts of Scup Alternatives**

The proposed action for the scup recreational fishery would implement Federal coastwide management

measures throughout the EEZ. As described earlier in the preamble, a conservation equivalent program is utilized by the Commission to manage state waters. Federally permitted charter/party permit holders and recreational vessels fishing for scup in the EEZ then would be subject to the recreational fishing measures implemented by NMFS; charter/party vessels participating solely in state waters without a Federal permit would be subject to the provisions adopted by the Commission; federally permitted vessels participating in both state and Federal waters would be subject to the more restrictive of the two measures implemented to manage the 2010 scup recreational fishery.

Scup Alternative 1 (an 11.0-inch (27.94-cm) minimum fish size, a 10-fish per person possession limit, and open seasons of January 1 through February 29 and June 12 through September 26) is projected to reduce scup landings in 2010 by 35 percent from 2009 levels, assuming comparable measures in both state and Federal waters. As explained elsewhere in the preamble, state and Federal measures are expected to differ; however, very little of the scup recreational harvest occurs in Federal waters of the EEZ. Affected trips under Scup Alternative 1 were defined as trips taken in 2009 that landed at least one scup smaller than 11.0 inches (27.94 cm), landed more than 10 scup, or landed scup during the closed seasons (March 1–June 12 and September 27–December 31). Analysis concluded that 2.15 percent of federally permitted party/charter vessel trips could be affected by this alternative. This alternative is more restrictive than is required for 2010.

The non-preferred scup coastwide alternative (Scup Alternative–2; 10.5-inch (26.67-cm) minimum fish size, 15-fish per person possession limit, and open seasons of January 1 through February 29 and October 1 through October 15) is not projected to achieve the necessary conservation required for the 2010 scup recreational fishery. Thus, Scup Alternative 2 is inconsistent with the goals and objectives of the FMP and the Magnuson-Stevens Act.

Scup Alternative 3 measures (a 10.5-inch minimum fish size, 10 fish per person possession limit, and fishing seasons June 6–September 26) are expected to constrain landings to the 2010 recreational harvest limit if comparable measures are utilized in state waters. However, as noted elsewhere in the preamble, the Commission is likely to implement more liberal measures in state waters that may result in the 2010 recreational

harvest limit being exceeded, regardless of what measures are taken for Federal waters—including closure of Federal waters of the EEZ. Affected trips under Scup Alternative 3 were defined as trips taken in 2009 that landed at least one scup smaller than 10.5 inches, landed more than 7 but less than 10 scup, or landed scup in the closed seasons. The analysis concluded that this alternative could impact 2.24 percent of Federally permitted party/charter vessel trips in 2009, if implemented.

#### Impacts of Black Sea Bass Alternatives

The proposed action for the black sea bass recreational fishery would limit coastwide catch to 1.83 million lb (830 mt) by imposing coastwide Federal measures throughout the EEZ. The impact of 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 June 1–30 and September 1–30), is projected to reduce black sea bass landings by 66 percent in 2010 from 2009 levels. This is more restrictive than necessary, but would likely ensure that landings remain below the 2010 recreational harvest limit. Impacted trips were defined as trips taken in 2009 that landed at least one black sea bass smaller than 12.5 inches (31.75 cm), landed more than 25 black sea bass, or landed black sea bass during the proposed closed seasons (January 1–May 31 and October 1–December 21). Analysis concluded that 6.44 percent of federally permitted party/charter vessel trips could be affected by this alternative.

The non-preferred black sea bass coastwide alternative for status quo (Black Sea Bass Alternative 2; 12.5-inch (31.75-cm) minimum fish size, 25-fish per person possession limit, and no closed season) is not expected to constrain 2010 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 12.5-inch (31.75-cm) minimum fish size, 10-fish per person possession limit, and May 22–September 12 fishing season), would reduce landings by 44 percent. Implementation of this alternative would result in a greater reduction than is required for the 2010 recreational black sea bass fishery.

Black Sea Bass Alternative 4, (a 12.5-inch (31.75-cm) minimum fish size, 25-fish per person possession limit, and May 22–August 8 and September 4–October 4 fishing seasons), is expected to reduce landings by 44 percent from

2009 levels. Affected trips are defined as trips taken in 2009 that landed one black sea bass smaller than 12.5 inches, landed more than 25 black sea bass, or landed black sea bass during closed seasons. Analysis concluded that 3.88 percent of Northeast party/charter trips could be affected by the measures of Black Sea Bass Alternative 4. The Council concluded that the different seasons and possession limits proposed under Alternative 4 provide a lesser negative impact than do the measures of Alternative 3, which is also projected to achieve the currently required 44-percent reduction in landings.

NMFS may consider further liberalization of the 2010 black sea bass fishing season utilized in concert with a 12.5-inch (31.75-cm) minimum fish size, 25-fish per person possession limit if analysis of final 2009 data indicate that action is justified. If such liberalization occurs with the addition of fishing days in either the August 9–September 3 closed season or after October 5, the impact to party/charter vessels would be further reduced.

#### Potential 2010 Regional Economic Impact Analysis Summary

Regionally, projected federally permitted party/charter revenue losses in 2010 range from \$6.4 million to \$21.9 million in sales, \$2.1 to \$7.3 million in income, and between 128 and 437 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 2010 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 24 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 Northeast 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 24 combinations of alternatives. For example, in NY, average losses are predicted to range from a high of \$5,990 to a low of \$1,474 per vessel, assuming a 25-percent reduction in effort, as described above. Average gross revenue losses per vessel under each of the 24 combinations of alternatives were generally highest in

NC followed by MA, NY, MD, NJ, RI, VA, CT then DE. Across states, average gross projected revenue losses range from a low of \$399 per vessel in DE to \$44,434 in NC.

#### Summary

The 2010 recreational harvest limits for summer flounder, scup, and black sea bass are 20-, 16-, and 60-percent higher, respectively, than the recreational harvest limits for 2009. However, current projection estimates of 2009 recreational landings indicate that scup will exceed the 2009 recreational harvest limit by 80 percent, and black sea bass landings will exceed the recreational harvest limit by 190 percent, based on data through MRFSS Waves 1–4. No overages are projected in the 2009 summer flounder recreational fishery.

As a result, the proposed recreational management measures for summer flounder in the Commission's conservation equivalency are likely to be similar or slightly more liberal for 2010 (i.e., either smaller minimum fish size, higher possession limits, and/or longer fishing seasons) under the proposed conservation equivalency system (Summer Flounder Alternative 1) than those in place in 2009. If the Commission approves state-developed measures as conservational equivalent to the coastwide measures, measures for Federal waters adopted by waiving § 648.4(b) may also be similar or slightly liberal for 2010 if NMFS approves conservation equivalency in the final rule.

The proposed measures for both scup and black sea bass are more restrictive than the measures in place for 2009.

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 proposed measures for scup are expected to achieve the required reduction in 2010 landings from 2009 levels, provided that comparable state measures are implemented through the Commission. Because it appears likely that the 2010 Commission measures may differ from Federal measures, NMFS will consider public comment

and more closely examine the Commission measures to determine the likelihood that overfishing could occur as a result of the combined proposed Federal and Commission measures before publishing a final rule. The majority of scup recreational harvest occurs within state waters.

The proposed black sea bass management measures were selected because they are the only set of measures proposed by the Council that are projected permit the maximum amount of landings under the 2010 recreational harvest limit. As stated elsewhere in the preamble, NMFS will consider final 2009 landings data and public comment, and may extend the 2010 black sea bass fishing season, consistent with measures designed to achieve the 2010 recreational harvest limit, in the final rule.

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: April 22, 2010.

**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. Section 648.102 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. This time period may be adjusted pursuant to the procedures in § 648.100.

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 19.5 inch (49.53 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 2010 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 — May 1 through September 30; minimum size—21.5 inches (54.61 cm); and possession limit—two fish.

6. In § 648.122, paragraph (g) is revised to read as follows:

**§ 648.122 Season and area restrictions.**

\* \* \* \* \*

(g) *Time restrictions.* Vessels that are not eligible for a moratorium permit under § 648.4(a) (6), and fishermen subject to the possession limit specified in § 648.125(a), may not possess scup, except from June 6 through September 27. This time period may be adjusted pursuant to the procedures in § 648.120.

7. In § 648.125, the first sentence of paragraph (a) is revised to read as follows:

**§ 648.122 Possession limit.**

(a) No person shall possess more than 10 scup in, or harvested from, the EEZ unless that person is the owner or operator of a fishing vessel issued a scup moratorium permit, or is issued a scup dealer permit.\*\*\*

\* \* \* \* \*

8. Section 648.142 is revised to read as follows:

**§ 648.142 Time restrictions.**

Vessels that are not eligible for a moratorium permit under § 648.4(a)(7), and fishermen subject to the possession limit specified in § 648.145(a), may possess black sea bass from May 22 through August 8 and September 4 through October 4, unless this time period is adjusted pursuant to the procedures in § 648.140.

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