

The second alternative would set the gag bag limit to zero and thereby prohibit the recreational harvest of gag. When the Council requested the current temporary rule, it intended to allow some recreational harvest of gag in 2011 and establish that level of harvest under the long-term management measures being developed in Amendment 32. However, because the rerun of the updated assessment was not completed and reviewed until January 2011, there is insufficient time to implement measures from Amendment 32 early enough in 2011 to meet the Council's intent.

The second alternative is the most conservative alternative. This alternative would reduce fishing mortality the most out of all the considered alternatives and therefore generate the greatest biological benefits to the gag stock. Although this alternative would not allow the recreational harvest of gag while the proposed interim rule is in effect, the number of dead discards would be reduced because no recreational fishing trips would be expected to target or be directed at gag. Because Florida adopted compatible regulations, this alternative would reduce the harvest sufficiently in 2011 to be consistent with the Council's rebuilding plan in Amendment 30B, as it would reduce removals between 58 percent and 67 percent and, as such, end overfishing. If Florida had not adopted compatible regulations, the estimated reduction in removals would be between 43 percent and 61 percent, which would reduce but might not be sufficient to end overfishing.

The third alternative would establish a recreational fishing season for gag of July 1, 2011, through August 15, 2011, and thus would allow for some recreational harvest of gag in 2011 as the Council intended when it requested the current interim rule. This alternative would establish a 46-day recreational fishing season, which is less than the 61-day season under the proposed action. This alternative also minimally overlaps with the red snapper season, which begins on June 1. This alternative would provide for-hire vessels with a greater number of options when marketing summer trips. The expected reduction in removals under this alternative is between 49 percent and 60 percent, and therefore might be sufficient to end overfishing.

The Council heard public testimony regarding potential recreational seasons for gag at its February 2011 meeting. Participants in the recreational sector asked for either a summer or winter season depending on their geographic location. In general, recreational

participants from Texas, southwest Florida, and central Florida favored a winter season, while recreational participants from other areas of the Gulf favored a summer season. In looking for a compromise, the Council recommended the proposed recreational season with no changes to the bag limit or size limit. The proposed recreational season would cover the end of the summer recreational fishing season and run through the beginning of the winter recreational fishing season. In addition, the estimated reductions in removals under the proposed recreational season are between 50 percent and 54 percent, which might be sufficient to end overfishing.

This proposed temporary rule does not establish any new reporting, record-keeping, or other compliance requirements.

List of Subjects in 50 CFR Part 622

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

Dated: April 18, 2011.
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 proposed to be 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.*

§ 622.20 [Amended]

2. In § 622.20, paragraph (b)(2)(iv)(A) is suspended.

3. In § 622.34, paragraph (v) is removed and reserved and paragraph (w) is added to read as follows:

§ 622.34 Gulf EEZ seasonal and/or area closures.

* * * * *

(w) *Seasonal closure of the recreational sector for gag.* The recreational sector for gag, in or from the Gulf EEZ, is closed from January 1 through September 15 and November 16 through December 31 each year. During the closure, the bag and possession limit for gag in or from the Gulf EEZ is zero.

4. In § 622.42, paragraphs (a)(1)(iii)(A)(3) and (a)(1)(iii)(B)(3) are suspended and paragraphs (a)(1)(iii)(A)(4) and (a)(1)(iii)(B)(4) are added to read as follows:

§ 622.42 Quotas.

- (a) * * *
- (1) * * *
- (iii) * * *
- (A) * * *

(4) For fishing year 2011 and subsequent fishing years—5.16 million lb (2.34 million kg).

- (B) * * *

(4) For fishing year 2011 and subsequent fishing years—430,000 lb (195,045 kg).

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[FR Doc. 2011-9724 Filed 4-20-11; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 110222150-1152-02]

RIN 0648-BA92

Fisheries of the Northeastern United States; Recreational Management Measures for the Summer Flounder, Scup, and Black Sea Bass Fisheries; 2011 Scup Specifications; Fishing Year 2011

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

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS proposes two actions in this rulemaking: An increase to the previously implemented scup commercial and recreational landing allowances for 2011 (specifications) and management measures for the 2011 summer flounder, scup, and black sea bass recreational fisheries. Inclusion of the proposed scup specification increase in this rulemaking is necessary to provide an opportunity for the public to comment on the revised recommendation from the Mid-Atlantic Fishery Management Council (Council) to increase the commercial and recreational scup landing allowances for 2011. The recreational management measures are necessary to comply with the implementing regulations for these fisheries which require NMFS to publish recreational measures for the fishing year and to provide an opportunity for public comment. The intent of the scup increase is to permit greater commercial and recreational harvest opportunity while preventing overfishing on the scup stock. Recreational management measures are

similarly intended to ensure that overfishing the summer flounder, scup, and black sea bass resources in 2011 is unlikely to occur.

DATES: Comments must be received by 5 p.m. local time, on May 23, 2011.

ADDRESSES: You may submit comments, identified by RIN 0648-BA92, 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 2011 Scup Specifications Increase and Summer Flounder, Scup, and Black Sea Bass Recreational Management Measures, 0648-BA92.

- **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 2011 Scup Specifications Increase and Summer Flounder, Scup, and Black Sea Bass Recreational Management Measures, 0648-BA92."

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

NMFS will accept anonymous comments (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 proposed scup increase Supplement Environmental Assessment (SEA) to the 2011 specifications and 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 both the scup specifications increase and the recreational management measures are available from Dr. Christopher M. Moore, Executive Director, Mid-Atlantic Fishery Management Council, Suite 201, 800 North State Street, 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:

General 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 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 fisheries of the Northeastern U.S. also appear at 50 CFR part 648. States manage these three species within 3 nautical miles (4.83 km) of their coasts, under the Commission's plan for summer flounder, scup, and black sea bass. The applicable species-specific Federal regulations govern vessels and individual fishermen fishing in Federal waters of the exclusive economic zone (EEZ), as well as vessels possessing a summer flounder, scup, or black sea bass Federal charter/party vessel permit, regardless of where they fish.

2011 Scup Specifications Increase

Specifications for the 2011 summer flounder, scup, and black sea bass fisheries published in the **Federal Register** on December 28, 2010, and became effective on January 1, 2011 (75 FR 81498). This rule established 2011 scup specifications, as follows: A Total Allowable Catch (TAC) of 24.1 million lb (10,932 mt); a 20.0-million-lb (9,072-mt) Total Allowable Landings (TAL), including research set-aside (RSA) of 396,500 lb (180 mt); a commercial quota of 15,290,730 lb (6,936 mt); and a recreational harvest limit of 4,312,770 lb (1,956 mt). During the December 2010 Council meeting, the Council recommended to NMFS an increase in the 2011 scup specifications. The Council's action to potentially increase

the 2011 scup specifications was taken to prevent potential negative impacts on recreational fishermen and provide for recreational fishing opportunities that might not be available under the previously implemented lower, more restrictive landing limit. Adoption of the Council's recommendation for increased scup specifications, which includes an increase to the scup recreational harvest limit, would permit the use of status quo recreational management measures for the 2011 fishery. See the scup recreational management measures section later in this preamble for additional information on how the potential increase recreational harvest limit impacts to the recreational fishery.

The Council formally submitted the increased scup specification recommendation to NMFS for review and rulemaking on January 26, 2011. The Council's revised scup specifications recommendation would increase the 2011 TAC to 31.92 million lb (14,479 mt) from the current TAC of 24.1 million lb (10,932 mt). After removal of estimated 2011 discards, the resulting increased TAL would be 26.50 million lb (12,020 mt). Because the 2011 RSA has already been awarded for scup, the Council recommended, and NMFS agrees, that no change to the RSA level should occur as a result of the increased scup specifications. Thus, after deducting the 2011 awarded RSA of 396,500 lb (180 mt) and applying the allocation criteria within the FMP, the increased commercial quota would be 20.36 million lb (9,235 mt) and the adjusted recreational harvest limit would be 5.74 million lb (2,604 mt).

In considering the scup TAC increase recommended by the Council, NMFS considered the range of possible TACs analyzed by the Council. NMFS is proposing the Council's preferred alternative without modification as it meets the objectives of the FMP, the Magnuson-Stevens Act, and other applicable law. Quota levels above the preferred alternative fail to satisfy the applicable requirements and were adjudged by the Council to be inconsistent with the scientific advice provided by the SSC. Lower TAC alternatives are more restrictive than necessary to meet the objectives of the FMP and would have higher socio-economic impacts on fishery participants.

Table 1 contains the scup commercial quota period information that would result from the proposed increase. All additional commercial scup measures, including possession limits and the amount of unused Winter I (January-May) commercial quota that may be

rolled over to the Winter II (November-December) fishing period, remain unchanged from those published in the

Federal Register on December 28, 2010 (75 FR 81498).

TABLE 1—PROPOSED REVISED COMMERCIAL SCUP QUOTA ALLOCATIONS FOR 2011 BY QUOTA PERIOD

Quota period	Percent share	Total allowable catch		Estimated discards		Initial quota		Initial quota less overages (through 10/31/2009)		Adjusted quota less overages and RSA	
		lb	mt	lb	mt	lb	mt	lb	mt	lb	mt
Winter I	45.11	11,231,307	5,094	1,907,070	865	9,324,237	4,229	N/A	N/A	9,184,725	4,166
Summer	38.95	9,697,615	4,399	1,646,650	747	8,050,965	3,652	N/A	N/A	7,930,504	3,597
Winter II	15.94	3,968,677	1,800	673,879	306	3,294,798	1,494	N/A	N/A	3,245,500	1,472
Total	100.0	24,897,600	11,293	4,227,600	1,918	20,670,000	9,376	N/A	N/A	20,360,730	9,235

NMFS is proposing to implement the Council’s recommendation for a 33-percent increase to the 2011 scup specifications. The increase would remain well below the 2011 scup Acceptable Biological Catch (ABC) of 51.70 million lb (23,451 mt). Furthermore, the increase would be below the scup maximum sustainable yield (MSY) level of 35.60 million lb (16,148 mt) and is consistent with the recommendation provided in a 2008 scup stock assessment and reiterated by the Council’s Scientific and Statistical Committee for the 2011 fishery advising against rapid increases in specification levels to meet MSY.

Recreational Management Measures Background

The Council process for devising recreational management measures to recommend to NMFS for rulemaking is generically described in the following section. All meetings are open to the public and the materials utilized during such meetings, as well as any documents created to summarize the meeting results, are public information and typically posted on the Council’s Web site (<http://www.nafmc.org>) or are available from the Council by request. Extensive background on the 2011 recreational management measures recommendation process is therefore not repeated in this preamble.

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’s implementing regulations require the Committees to review scientific and other relevant information annually and to recommend management measures necessary to constrain landings within the recreational harvest limits established for the summer flounder, scup, and black sea bass fisheries for the upcoming fishing year. The FMP limits the choices for the types of 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 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 and all applicable laws and Executive Orders before ultimately implementing measures for Federal waters.

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.

Proposed 2011 Recreational Management Measures

NMFS is proposing through this rule the following measures to apply in the Federal waters of the EEZ and to all federally permitted party/charter vessels with applicable summer flounder, scup, or black sea bass permits regardless of where they fish for the 2011 recreational summer flounder, scup, and black sea bass fisheries: For summer flounder, use of state-by-state conservation equivalency measures, which are the status quo measures; for scup, a 10.5-inch (26.67-cm) minimum fish size, a 10-fish per person possession limit, and an open season of June 6 through September 26, which are the status quo

measures; and, for black sea bass, a 13.0-inch (33.02-cm) minimum fish size, a 25-fish per person possession limit, and open season of July 1 through October 1 and November 1 through December 31. NMFS will consider retaining or reinstating status quo black sea bass measures, as needed, for Federal waters (i.e., a 12.5-in (31.75-cm) minimum fish size, a 25-fish per person possession limit and fishing seasons from May 22–October 11 and November 1–December 31) if the Commission develops and implements a state-waters conservation equivalency system that, when paired with the Federal status quo measures, provides the necessary conservation to ensure the 2011 recreational harvest limit will not be exceeded. More detail on these proposed measures is provided in the following sections.

Summer Flounder Recreational Management Measures

The 2011 recreational harvest limit for summer flounder is 11,583,424 lb (5,254 mt), a 35-percent increase from the 2010 limit of 8.59 million lb (3,896 mt). Final landings for 2010 are 4.98 million lb (2,259 mt), well below the recreational harvest limit. The Council and Commission have recommended the use of conservation equivalency to manage the 2011 summer flounder recreational fishery.

NMFS implemented Framework Adjustment 2 to the FMP on July 29, 2001 (66 FR 36208), to permit the use of conservation equivalency to manage the recreational summer flounder 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 partitioned from the coastwide recreational harvest limit 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.

The Council and Board annually recommend that either state- or region-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.

When 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 Federal permit holders to comply with the more restrictive management measures when state and Federal measures differ. In such a situation, federally permitted summer flounder charter/party permit holders and individuals 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, or that submits measures that would exceed the Commission-specified harvest limit for that state.

Much of the conservation equivalency measures development process happens at both the Commission and individual state level. The 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. Individuals seeking information regarding the specific state measure development process or the Commission process for technical evaluation of proposed measures should contact the marine fisheries agency in the state of interest, the Commission, or both.

Once states select their final 2011 summer flounder management measures through their respective development, analytical, and review processes and

submit them to the Commission, the Commission will conduct further 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 overarching authority in the state or Commission management measure development, but is an equal participant along with all the member states in the measures review process. 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 2011 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 2011 precautionary default measures recommended by the Council and Board are for a 20.0-inch (50.80-cm) minimum fish size, a possession limit of two fish, and an open season of May 1 through September 30, 2011.

As described above, for each fishing year, NMFS implements either coastwide measures or conservation equivalent measures at the final rule stage. The 2011 coastwide measures recommended by the Council and Board for 2011 are an 18.5-inch (46.99-cm) minimum fish size, a possession limit of two fish, and an open season from May 1 to September 30, 2011.

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 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 Recreational Management Measures

The 2011 scup recreational harvest limit is currently 4,312,770 lb (1,956 mt), as implemented by the December 28, 2010, specifications final rule (75 FR 81498); however, through this rule

NMFS is proposing to increase the 2011 scup recreational harvest limit to 5.74 million lb (2,604 mt). Estimated 2010 scup recreational landings are 5.74 million lb (2,604 mt). The Council and Commission have recommended measures that reflect the status quo for the 2011 scup recreational fishery. The status quo measures for Federal waters are for a 10.5-in (26.67-cm) minimum fish size, a 10-fish per person possession limit, and an open season of June 6 through September 26 (*i.e.*, closed season from January 1–June 5 and again from September 27–December 31). NMFS proposes to retain scup recreational management measures that reflect the status quo for 2011 in Federal waters for use in conjunction with the increased recreational harvest limit proposed concurrently by this rule.

NMFS acknowledges that the Commission 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. Thus, recreational management measures will differ between state and Federal waters in 2011. Historically, very little of the scup recreational harvest comes from the Federal waters of the EEZ. The scup recreational harvest from Federal waters for 2009 was approximately 2 percent of the total coastwide landings.

Black Sea Bass Recreational Management Measures

The 2011 black sea bass recreational harvest limit is 1.84 million lb (835 mt), as published in final rule (75 FR 81498; December 28, 2010). The 2010 black sea bass recreational landings were 3.11 million lb (1,411 mt); thus, a 41-percent coastwide reduction in landings from 2010 levels would be required to constrain landings to the 2011 black sea bass recreational harvest limit.

The Council has recommended measures designed to achieve a 41-percent reduction in black sea bass recreational landings. These measures for Federal waters are a 13.0-inch (33.02-cm) minimum fish size, a 25-fish per person possession limit, and open season of July 1 through October 1 and November 1 through December 31 (*i.e.*, closed seasons from January 1–June 30 and October 2–31).

Concurrent with the development of this proposed rule, the Commission has initiated development of Addendum XXI to the Commission's Black Sea Bass FMP. This addendum contemplates application of state-by-state conservation equivalency approaches for black sea bass recreational management measures in state waters.

Interested parties are urged to contact the Commission directly (<http://www.asmfrc.org> or (703) 842-0740) as NMFS has only a participatory role in the Commission's process as a Commission voting member. The Council has initiated development of an amendment to the Federal FMP to examine these types of approaches for application in Federal waters; however, the amendment process at the Federal level takes more time to complete than the Commission's addendum process and cannot be completed in time to implement for the 2011 fishing year.

In anticipation that the Commission may develop a conservation equivalency system for state waters, the Council recommended to NMFS that Federal waters black sea bass measures stay or revert to the status quo, as needed, dependent on the completion of the Commission's Addendum XXI. The Council indicated that the as of yet completed Commission measures for state waters, when paired with the status quo measures for Federal waters, are anticipated to achieve the required reduction necessary for the 2011 black sea bass recreational fishery. NMFS is proposing to implement the aforementioned Council-recommended measures (13.0-inch (33.02-cm) minimum fish size, 25-fish possession limit, and July 1–October 1 and November 1–December 31 season) for Federal waters while the Commission's process for state waters conservation equivalency proceeds. This approach is consistent with the joint Council and Commission discussion and motions jointly adopted during the December 15, 2010, meeting at which recreational management measures options were contemplated and approved by both groups.

If the Commission completes a state waters conservation equivalency system for 2011, it is expected that formal analyses and correspondence from the Commission will be provided to both the Council and NMFS conveying the state waters conservation equivalency measures for 2011. In addition, it is expected that the correspondence will demonstrate that the Commission-based conservation equivalency program paired with the status quo Federal measures (i.e., a 12.5-in (31.75-cm) minimum fish size, 25-fish per person possession limits and May 22–October 11 and November 1–December 31 seasons) are sufficient to constrain recreational landings to the 1.84 million lb (835 mt) recreational harvest limit for 2011. If the timing of this Commission process is complete, including the necessary correspondence to NMFS and the Council, before a final rule has been

issued by NMFS for the 2011 recreational management measures, NMFS may leave the status quo measures in place for Federal waters. The decision to retain the status quo measures for Federal waters will be contingent on the as of yet to be completed analyses and recommendation from the Commission, and any such decision would be relayed in the final rule published in the **Federal Register**. If the Commission conservation equivalency development process extends beyond the issuance of a recreational management measures final rule, NMFS may issue a second rule to reinstate 2010 measures for Federal waters (i.e., revert to status quo), pending the completion of the Commission process and concurrence by NMFS that the combination of state waters conservation equivalency and status quo Federal measures will achieve the desired 2011 fishery performance. Should the Commission ultimately disapprove or elect not to approve conservation equivalency measures for use in state waters for the 2011 fishery, then Federal measures would remain as proposed in this rule for the duration of the 2011 fishing year: A 13.0-inch (33.02-cm) minimum fish size, 25-fish possession limit, and July 1–October 1 and November 1–December 31.

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.

IRFAs were prepared for both the scup specifications and the recreational management measures, as required by section 603 of the Regulatory Flexibility Act (RFA). The IRFAs describe 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 the two actions is contained in the preamble and in the **SUMMARY** of this proposed rule. A summary of the analyses follows. Copies of the complete IRFAs are available from the Council (see **ADDRESSES**).

This proposed rule does not duplicate, overlap, or conflict with other Federal rules.

Proposed Scup TAC/TAL Increase

The potential impacts of the 2011 scup specifications was provided in the IRFA for the 2011 summer flounder, scup, and black sea bass specifications proposed rule published in the **Federal Register** on November 17, 2010, (75 FR 70192). At 31.92 million lb (14,479 mt), the scup TAC increase proposed by this rule is within the 24.10 million lb (10,932 mt) to 35.63 million lb (16,157 mt) TAC range previously described and analyzed in the 2011 specifications IRFA. The following is provided for the proposed scup increase; however, more extensive information is available in the November 17, 2010, IRFA summary issued for the initially proposed 2011 scup specifications.

The proposed scup TAC/TAL increase could affect any of the 398 federally-permitted commercial fishery vessels that landed scup in 2009, the most recent year for which complete permit data are available. Under the Council's preferred alternative to increase the scup TAC and TAL for 2011, labeled Alternative 1B in the supplemental EA, commercial fishing vessel revenues could increase by \$21,432 per vessel. For comparison, this is 90 percent higher than revenues associated with the 2010 fishery levels and \$12,940 higher than the estimated profits associated with the currently implemented commercial quota level.

In considering the scup TAC increase recommended by the Council, NMFS considered the range of possible TACs analyzed by the Council. NMFS is proposing the Council's preferred alternative without modification as it meets the objectives of the FMP, the Magnuson-Stevens Act, and other applicable law while also providing the lowest impact on regulated entities. Quota levels above the preferred alternative fail to satisfy the applicable requirements and were adjudged by the Council to be inconsistent with the scientific advice provided by the SSC. Lower TAC alternatives are more restrictive than necessary as they have higher impacts on regulated entities than would the preferred alternative.

Recreational Management Measures

The proposed recreational management measures 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 \$7.0 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 980 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 348 vessels reported active participation in the 2009 recreational summer flounder, scup, and/or black sea bass fisheries.

In the IRFA, the no-action alternative (*i.e.*, maintenance of the regulations as codified) is: (1) For summer flounder, coastwide measures of a 19.5-inch (49.53-cm) minimum fish size, a 2-fish possession limit, and an open season from May 1 to September 30; (2) for scup, a 10.5-inch (26.67-cm) minimum fish size, a 10-fish possession limit, and an open season of June 6 through September 26; and (3) for black sea bass, a 12.5-inch (31.75-cm) minimum size, a 25-fish possession limit, and open seasons of May 22–October 11 and November 1–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 18 combinations of alternatives proposed. Although NMFS's RFA guidance recommends assessing changes in profitability as a result of proposed measures, the quantitative impacts were instead evaluated using expected 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 expected 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 2010 that would have been affected by the proposed 2011 management measures. All 2010 party/charter fishing trips that would have been constrained by the proposed 2011 measures in each state were considered to be affected trips. Marine Recreational Fishery Statistics Survey (MRFSS) data indicate that anglers took 30.66 million fishing trips in 2010 in the Northeastern U.S., and that party/charter anglers accounted for 1.43 million of the angler fishing trips, private/rental boat trips accounted for 16.05 million angler fishing trips, and shore trips accounted for 13.17 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 10-percent reduction and a 25-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 2011.

Total economic losses to party/charter vessels were then estimated by multiplying the number of potentially affected trips in each state in 2011, under the two hypothetical scenarios, by the estimated average access fee of \$107.13 paid by party/charter anglers in the Northeast in 2010. Finally, total economic losses were divided by the number of federally permitted party/charter vessels that participated in the summer flounder fisheries in 2010 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 2011. The analysis assumed that angler effort and catch rates in 2011 will be similar to 2010.

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 88 percent of summer flounder and 98 percent of scup landings in 2009, 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 10-percent; and (2) a 25-percent reduction in the number of fishing trips that are predicted to be affected by implementation of the management measures in the Northeast in 2011. Reductions in fishing effort of this magnitude in 2011 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 2011.

Impacts of Summer Flounder Alternatives

The proposed action for the summer flounder recreational fishery would limit coastwide catch to 11.58 million lb (5,254 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 2011 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 2011 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.*, 20.0-inch (50.80-cm) minimum fish size, a possession limit of two fish, and an open season of May 1 through September 30, 2011). 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 2011. Under the precautionary default measures, impacted trips are defined as trips taken in 2010 that landed at least one summer flounder smaller than 20.0 inches (50.80 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 0.86 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 18.5-inch (46.99-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 2010 that landed at least one summer flounder smaller than 18.5 inch (46.99 cm) that landed more than two summer flounder, or landed summer flounder during closed seasons. The analysis concluded that the measures would affect 0.79 percent of the party/charter vessel trips in the Northeast.

Continuation of the summer flounder coastwide management measures (*i.e.*, a 20.0-inch (50.80-cm) minimum fish size, two-fish possession limit, and a May 1 through September 1 fishing season) is expected to constrain 2011 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 2011 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 and NMFS is concurrently proposing an increase to the scup TAC/TAL and recreational harvest limit and establish scup recreational management measures designed to achieve the increased recreational harvest limit. Federally permitted charter/party permit holders and recreational vessels fishing for scup in the EEZ 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 scup party/charter vessels participating in both state and Federal waters would be subject to the more restrictive of the two measures implemented to manage the 2011 scup recreational fishery.

Scup Alternative 1 (a 10.5-inch (26.67-cm) minimum fish size, a 10-fish per person possession limit, and open season of June 6 through September 26) is the status quo. 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 2010 that landed at least one scup smaller than 10.5-inch (26.67-cm), landed more than 10 scup, or landed scup during the closed seasons (January 1–June 5 and September 27–December 31). Analysis concluded that 1.85 percent of federally permitted party/charter vessel trips could be affected by this alternative. While these measures are the status quo, state and federal measures differed in 2010. This alternative is projected to constrain landings to the Council and NMFS proposed increased scup recreational harvest limit of 5.74 million lb (2,604 mt).

The non-preferred scup coastwide alternative (Scup Alternative 2; 10.5-inch (26.67-cm) minimum fish size, 10-fish per person possession limit, and fishing seasons January 1–February 28 and October 1–31) is projected to constrain landings to levels below the current 2011 scup recreational harvest limit. Affected trips under Scup Alternative 2 were defined as trips taken in 2010 that landed at least one scup smaller than 10.5 inches (26.67 cm), landed more than 10 scup, or landed scup in the closed seasons. The analysis concluded that this alternative could impact 5.71 percent of federally permitted party/charter vessel trips in 2011, if implemented.

Scup Alternative 3 measures (an 11.0-inch (27.94-cm) minimum fish size, 10-fish per person possession limit, and fishing seasons May 24–September 26) are expected to effectively constrain landings to the current 2011 recreational harvest limit if comparable measures are utilized in state waters. Affected trips under Scup Alternative 3 were defined as trips taken in 2010 that landed at least one scup smaller than 11.0-inch (27.94-cm), landed more than 10 scup, or landed scup in the closed seasons. The analysis concluded that this alternative could impact 1.83 percent of

federally permitted party/charter vessel trips in 2011, if implemented.

Because NMFS is proposing to increase the 2011 scup recreational harvest limit, the measures contained in Scup Alternatives 2 and 3 are more restrictive than necessary for managing the 2011 fishery. The projected impacts of Scup Alternative 3 are slightly less than the measures proposed by NMFS; however, the overall estimated reduction in landings associated with Alternative 3 are expected to be up to 25 percent from 2010 levels and, as such, are more restrictive than necessary for 2011.

Impacts of Black Sea Bass Alternatives

The proposed action for the black sea bass recreational fishery would limit coastwide catch to 1.84 million lb (835 mt) by imposing coastwide Federal measures throughout the EEZ. The impact of Black Sea Bass Alternative 1 (a 13.0-inch (33.02-cm) minimum fish size, a 25-fish per person possession limit, and an open season of July 1–October 1 and November 1–December 31), is projected to reduce black sea bass landings by 41 percent in 2011 from 2010 levels. These measures would likely ensure that landings remain below the 2011 recreational harvest limit. Impacted trips were defined as trips taken in 2010 that landed at least one black sea bass smaller than 13.0-inch (33.02-cm), landed more than 25 black sea bass, or landed black sea bass during the proposed closed seasons (January 1–June 30 and October 2–31). Analysis concluded that 3.45 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 fishing seasons of May 22–October 11 and November 1–December 31) is not expected to constrain 2011 landings to the recreational harvest limit if implemented in both state and Federal waters. Individual states may, though the Commission's Addendum XXI, adopt sufficiently restrictive measures that when paired with the Black Sea Bass Alternative 2 measures in Federal waters, achieve the required reduction in landings to constrain harvest to the 2011 recreational harvest limit. The Black Sea Bass Alternative 2 measures could affect 0.76 percent of the effort onboard party/charter vessels if implemented in 2011.

Black Sea Bass Alternative 3 (a 12.5-inch (31.75-cm) minimum fish size, 25-fish per person possession limit, and no

closed season) is not expected to effectively constrain landings to the 2011 recreational harvest limit and, as such, is not consistent with the objectives of the FMP or Magnuson-Stevens Act.

Potential 2011 Regional Economic Impact Analysis Summary

Regionally, projected federally permitted party/charter revenue losses in 2011 range from \$2.1 million to \$7.8 million in sales, \$686 thousand to \$2.6 million in income, and between 40 and 156 jobs, if a 10-percent reduction in the number of affected trips occurs. The estimated losses are approximately two and a half times as high if a 25-percent reduction in affected trips is assumed to occur.

Potential revenue losses in 2011 could differ for federally permitted party/charter vessels that land more than one of the regulated species. The cumulative maximum gross revenue loss per vessel varies by the combination of permits held and by state. All 18 potential combinations of management alternatives for summer flounder, scup, and black sea bass are predicted to affect party/charter vessel revenues to some extent in all of the 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 18 combinations of alternatives. For example, in NY, average losses are predicted to range from a high of \$3,477 to a low of \$593 per vessel, assuming a 10-percent reduction in effort, as described above. Average gross revenue losses per vessel under each of the 18 combinations of alternatives were generally highest in NC followed by MA, NJ, NY, RI, CT, MD, VA, then DE. Across states, average gross projected revenue losses range from a low of \$19 per vessel in DE to \$19,003 in NC.

Summary

The proposed recreational management measures for summer flounder in the Commission's conservation equivalency are likely to be similar or more liberal for 2011 (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 2010. 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 more liberal for 2011 if NMFS approves conservation equivalency in the final rule.

NMFS is proposing to keep the status quo with respect to scup recreational management measures for 2011, but is proposing an increase to the recreational harvest limit resulting from increases to the scup TAC and TAL. The rationale for this proposed increase is outlined in the preamble to this rule and not repeated here.

The proposed measures for black sea bass are more restrictive than the measures in place for 2010; however, NMFS may retain the status quo measures for Federal waters, but it is dependent on efforts underway by the Commission to devise and implement a state waters management system that, when paired with the 2010 status quo measures for Federal waters, will result in the necessary reduction in 2011 landings from 2010 levels.

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 allows states to implement management measures tailored, to some degree, to meet the needs of their individual respective 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, when used in concert with the proposed increase to the 2011 recreational harvest limit, are expected to achieve the required reduction in 2011 landings from 2010 levels, provided that comparable state measures are implemented through the Commission. Because it appears likely that the 2011 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 to constrain landings to the recreational harvest limit. As discussed in the preamble, there is a

possibility that status quo measures may be retained depending on the outcome of the Commission's Addendum XXI process. However, NMFS must at this time propose measures that achieve the objectives of the FMP and Magnuson-Stevens Act by constraining 2011 harvest of black sea bass to the recreational harvest limit.

There are no new reporting or recordkeeping requirements contained in any of the alternatives considered for this action.

List of Subjects in 50 CFR Part 648

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: April 15, 2011.

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 18.5 inch (46.99 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.

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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 2011 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—20.0 inches (50.80 cm); and possession limit—two fish.

6. 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 July 1 through October 1 and November 1 through December 31, unless this time period is adjusted pursuant to the procedures in § 648.140.

7. 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 13.0 inches (33.02 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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