

in the South Atlantic, *i.e.*, state or Federal waters, by a vessel for which a Federal commercial vessel permit for South Atlantic snapper-grouper has been issued, except if NMFS determines a limited commercial fishing season for red snapper is allowable, as specified in § 622.183(b)(5).

■ 8. In § 622.193, paragraph (y) is added to read as follows:

**§ 622.193 Annual catch limits (ACLs), annual catch targets (ACTs), and accountability measures (AMs).**

\* \* \* \* \*

(y) *Red snapper*—(1) *Commercial sector*. The commercial ACL for red snapper is zero. However, if NMFS determines that the previous year's estimated red snapper landings and dead discards are less than the ABC, limited red snapper harvest and possession may be allowed for the current fishing year and the commercial ACL value would be determined using the formula described in the FMP. The AA will file a notification with the Office of the Federal Register to announce the limited commercial ACL for the current fishing year. NMFS will monitor commercial landings during the limited season, and if commercial landings, as estimated by the SRD, reach or are projected to reach the commercial ACL, based on the formula described in the FMP, the AA will file a notification with the Office of the Federal Register to close the commercial sector for red snapper for the remainder of the year. On and after the effective date of the closure notification, all sale or purchase of red snapper is prohibited and harvest or possession of red snapper is limited to the bag and possession limits. This bag and possession limit and the prohibition on sale/purchase apply in the South Atlantic on board a vessel for which a valid Federal commercial or charter vessel/headboat permit for South Atlantic snapper-grouper has been issued, without regard to where such species were harvested or possessed, *i.e.*, in state or Federal waters.

(2) *Recreational sector*. The recreational ACL for red snapper is zero. However, if NMFS determines that the previous year's estimated red snapper landings and dead discards are less than the ABC, limited red snapper harvest and possession may be allowed for the current fishing year and the recreational ACL value would be determined using the formula described in the FMP. The AA will file a notification with the Office of the Federal Register to announce the limited recreational ACL and the length of the recreational fishing season for the current fishing year. The

length of the recreational fishing season for red snapper serves as the in-season accountability measure. See § 622.183(b)(5) for details on the recreational fishing season. On and after the effective date of the recreational closure notification, the bag and possession limits for red snapper are zero.

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 648

[Docket No. 130403319-3319-01]

RIN 0648-BD13

#### Fisheries of the Northeastern United States; Recreational Management Measures for the Summer Flounder, Scup, and Black Sea Bass Fisheries; Fishing Year 2013

**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 2013 summer flounder, scup, and black sea bass recreational fisheries. This rule also proposes to implement an increase in the 2013 and 2014 black sea bass specifications, consistent with a new acceptable biological catch recommendation. 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 14, 2013.

**ADDRESSES:** You may submit comments on this document, identified NOAA-NMFS-2013-0060, by any of the following methods:

- *Electronic Submission:* Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to [www.regulations.gov/#/docketDetail;D=NOAA-NMFS-2013-0060](http://www.regulations.gov/#/docketDetail;D=NOAA-NMFS-2013-0060), click the "Comment Now!" icon, complete the required fields, and enter or attach your comments.

- *Fax:* (978) 281-9135, Attn: Comments on 2013 Proposed Summer Flounder, Scup, and Black Sea Bass

Recreational Measures, NOAA-NMFS-2013-0060.

- *Mail and Hand Delivery:* John K. Bullard, Regional Administrator, NMFS, Northeast Regional Office, 55 Great Republic Drive, Gloucester, MA 01930. Mark the outside of the envelope: "Comments on 2013 FSB Recreational Measures."

*Instructions:* Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered by NMFS. All comments received are a part of the public record and will generally be posted for public viewing on [www.regulations.gov](http://www.regulations.gov) without change. All personal identifying information (*e.g.*, name, address, etc.), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NMFS will accept anonymous comments (enter "N/A" in the required fields if you wish to remain anonymous). Attachments to electronic comments will be accepted in Microsoft Word, Excel, or Adobe PDF file formats only.

Copies of the Supplemental Environmental Assessment and Initial Regulatory Flexibility Analysis (SEA/IRFA) and other supporting documents for the recreational harvest measures are available from Dr. Christopher M. Moore, Executive Director, Mid-Atlantic Fishery Management Council, Suite 201, 800 N. State Street, Dover, DE 19901. The recreational harvest measures document is also accessible via the Internet at: <http://www.nero.noaa.gov>.

**FOR FURTHER INFORMATION CONTACT:** Moira Kelly, Fishery Policy Analyst, (978) 281-9218.

#### 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 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 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.

**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 ([www.mafmc.org](http://www.mafmc.org)) or are available from the Council by request. Extensive background on the 2013 recreational management measures recommendation process is therefore not repeated in this preamble.

The FMP established monitoring 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 monitoring 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 monitoring 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.

**Proposed Specifications and 2013 and 2014 Recreational Management Measures**

In this rule, NMFS proposes management measures for the 2013 summer flounder, scup, and black sea bass recreational fisheries. This rule also proposes to implement an increase in the 2013 and 2014 black sea bass specifications, consistent with a new acceptable biological catch recommendation. 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.

**Black Sea Bass Specifications**

The process for establishing specifications is summarized here and is described in detail in the specifications final rule (December 31, 2012; 77 FR 76842). The Council's Scientific and Statistical Committee (SSC) met on July 25 and 26, 2012, to recommend acceptable biological catches (ABC) for the 2013–2015 summer flounder, scup, and black sea bass fisheries. The

Summer Flounder, Scup, and Black Sea Bass Monitoring Committees met on July 27, 2012, to discuss specification-related recommendations for the three fisheries. Following the SSC and Monitoring Committee meetings, the Council and the Board met to consider the recommendations of the SSC, the three monitoring committees, and public comments, and made their specification recommendations at a joint meeting held on August 15, 2012. At that time, the SSC recommendation for the 2013 black sea bass fishery was an ABC of 4.5 million lb (2,041 mt). Black sea bass remains a data-poor stock, with relatively high uncertainty for the purposes of calculating ABC. The SSC rejected the overfishing limit (OFL) estimate provided from the stock assessment, stating that it was highly uncertain and not sufficiently reliable to use as the basis of management advice. The SSC recommended a 3-year specification period, with a constant harvest strategy that would implement the same ABC for 2013–2015. However, the Council only endorsed the ABC for 2013, and recommended the annual catch limit (ACL), annual catch target (ACT), and quotas for 2013 only. The Council decided to recommend specifications for just 2013 in the hope that additional information would be available for the SSC in the coming year.

At its December 2012 meeting, the Council requested that the SSC revisit the 2013 black sea bass specifications and make a recommendation for the 2014 fishing year. On January 23, 2013, the SSC met to reconsider these specifications and recommended an increase in the specifications for both the 2013 and 2014 fishing years. The SSC revised its recommendation for the 2013 and 2014 black sea bass ABC to 5.5 million lb (2,495 mt). The Council voted at its February 2013 meeting to recommend that the new ABC be implemented in conjunction with the recreational management measures. In this rule, NMFS is proposing the Council's recommended specifications for black sea bass. The following table provides the current specifications for black sea bass for 2013 and the proposed specifications for 2013 and 2014.

	Established specifications for 2013		Proposed specifications for 2013 and 2014	
	million lb	mt	million lb	mt
ABC .....	4.50	2,041	5.50	2,495
Commercial ACL & ACT .....	2.13	966	2.60	1,179
Commercial Quota .....	1.78	805	2.17	984
Recreational ACL & ACT .....	2.37	1,075	2.90	1,315

	Established specifications for 2013		Proposed specifications for 2013 and 2014	
	million lb	mt	million lb	mt
Recreational Harvest Limit .....	1.85	838	2.26	1,025

**Proposed 2013 Recreational Management Measures**

NMFS is proposing the following measures that would 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 2013 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-inch (25.4-cm) minimum fish size, a 30-fish per person possession limit, and an open season of January 1 through December 31; and, for black sea bass, a 12.5-inch (31.8-cm) minimum fish size, a 20-fish per person possession limit for open seasons of May 19 through October 14 and November 1 through December 31. NMFS may implement more restrictive black sea bass measures, as recommended by the Council (*i.e.*, a 12.5-inch (31.8-cm) minimum fish size, a 10-fish per person possession limit and an open season of June 1–September 5), for Federal waters if the Commission is unable to develop and implement state-waters measures that, when paired with the Council’s recommended measures, provide the necessary conservation to ensure the 2013 recreational harvest limit will not be exceeded. More detail on these proposed measures is provided in the following sections.

**Summer Flounder Recreational Management Measures**

NMFS proposes to implement the use of conservation equivalency to manage the 2013 summer flounder recreational fishery. The 2013 recreational harvest limit for summer flounder is 7.63 million lb (3,459 mt), as published in the final rule implementing the 2013 specifications (December 31, 2012; 77 FR 76942). Projected landings for 2012 are approximately 6.92 million lb (3,139 mt), well below the 2013 recreational harvest limit, therefore, no reduction in landings is needed. As a result, the Council and Commission have recommended the use of conservation equivalency to manage the 2013 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 by the Commission from the coastwide recreational harvest limit, as long as the combined effect of all of the states’ management measures achieves the same level of conservation as would Federal coastwide measures.

The Council and Board annually recommend that either state- or region-specific recreational measures be developed (conservation equivalency) or coastwide management measures be implemented 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 process to develop specific state measure 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.

This year, the Commission has proposed an addendum to its Summer Flounder FMP to implement 2013 recreational fishing rules for summer flounder similar to those from 2012, partly to minimize the reductions facing two states (New York and New Jersey) and partly to allow for a different distribution of fishing opportunities in the 2013 season. The proposed approach is intended to allow states to capitalize on harvest opportunities that would be foregone by states that choose not to fully utilize their 2013 harvest target. Specifically, the addendum proposes a mechanism to allow states access to the summer flounder recreational harvest limit that is projected to not be harvested in 2013. The addendum responds to an unintended consequence of using conservation equivalency to stay within the annually established coastwide recreational harvest limit for summer flounder, and to respond to the changes in the fishery since the 1998 state landings targets were established. More information on this proposed addendum is available from the Commission ([www.asmfcr.org](http://www.asmfcr.org)).

Once states select their final 2013 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 development of state or Commission management measures, but is an equal participant along with all the member states in the review process. NMFS retains the final authority either to approve or to disapprove the use of conservation equivalency in place of the coastwide measures in Federal waters, and will publish its determination as a final rule in the **Federal Register** to establish the 2013 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 2013 precautionary default measures recommended by the Council and Board are for a 20.0-inch (50.8-cm) minimum fish size, a possession limit of two fish, and an open season of May 1 through September 30, 2013.

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**

NMFS is proposing to implement the Council and Commission's recommended scup recreational management measures for 2013 in Federal waters. The 2013 scup recreational harvest limit is 7.55 million lb (3,425 mt), as published in final rule (December 31, 2012; 77 FR 76942). Estimated 2012 scup recreational landings are 4.06 million lb (1,842 mt), well below the 2013 recreational harvest limit, therefore, no reduction in landings is needed. The Council and Commission's recommended measures for the 2013 scup recreational fishery are for a 10-in (25.4-cm) minimum fish size, a 30-fish per person possession limit, and an open season of January 1 through December 31. These measures are intended to promote an increase in

recreational scup fishing in order to achieve the recreational harvest limit.

#### **Black Sea Bass Recreational Management Measures**

NMFS is proposing to implement the Council's recommended recreational management measures to reduce landings for black sea bass. The proposed 2013 black sea bass recreational harvest limit is 2.26 million lb (1,025 mt). The 2012 recreational harvest limit was 1.32 million lb (599 mt), and the projected 2012 recreational landings were 2.99 million lb (1,356 mt). The projected 2012 landings are above the 2012 recreational harvest limit and both the previously established and the proposed recreational harvest limit for 2013. The Council and the Commission, therefore, will need to establish management measures to reduce landings in 2013 to a level below the 2013 recreational harvest limit. The majority of the recreational black sea bass fishery occurs in state waters. As such, the Commission agreed to make more significant changes to the state-waters measures to ensure the 2013 recreational harvest limit is not exceeded.

In light of the Commission's effort to make changes to the state-water measures, the Council recommended a 12.5-inch (31.8-cm) minimum fish size and 20-fish possession limit for an open season of May 19–October 14 and November 1–December 31, and NMFS proposes to implement these recommended measures. However, if the Commission is unable to implement measures that would constrain landings in state waters sufficiently, NMFS may implement the Council's recommended measures designed to achieve the full necessary reduction in landings in Federal waters: A 12.5-inch (31.8-cm) minimum fish size; a 10-fish possession limit; and an open season of June 1–September 5. In comparison, the 2012 recreational harvest measures for black sea bass were a 12.5-inch (31.8-cm) minimum size, a 15-fish possession limit for an open season of January 1–February 29, and a 12.5-inch (31.8-cm) minimum fish size and 25-fish possession limit for open seasons of May 19–October 14 and November 1–December 31.

The decision to implement the Council's recommended 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 reflected in the final rule published in the **Federal Register**.

#### **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.

The Council prepared an IRFA, as required by section 603 of the Regulatory Flexibility Act (RFA), which is included in the Supplemental EA and supplemented by information contained in the preamble to this proposed rule. The IRFA describes the economic impact this proposed rule, if adopted, would have on small entities. A description of the action, why it is being considered, and the legal basis for this action are contained at the beginning of this section of the preamble and in the **SUMMARY** of this proposed rule. A summary of the IRFA follows. A copy of this analysis is available from the Council (see **ADDRESSES**).

This action does not introduce any new reporting, recordkeeping, or other compliance requirements. This proposed rule does not duplicate, overlap, or conflict with other Federal rules.

#### *Description and Estimate of Number of Small Entities to Which the Rule Would Apply*

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 852 vessels possessing a Federal charter/party permit for summer flounder, scup, and/or black sea bass in 2012, the most recent year for which complete permit data are available. However, only 355 vessels reported active participation in the 2012 recreational summer flounder, scup, and/or black sea bass fisheries.

*Economic Impacts of the Proposed Action Compared to Significant Non-Selected Alternatives*

The IRFA identified three alternatives in this action: The no-action alternative, the status quo alternative and the preferred alternative. The no-action alternative (*i.e.*, maintenance of the regulations as codified) is: (1) For summer flounder, coastwide measures of a 18-inch (45.7-cm) minimum fish size, a 4-fish possession limit, and an open season from May 1 through September 30; (2) for scup, a 10.5-inch (26.7-cm) minimum fish size, a 20-fish possession limit, and an open season of January 1 through December 31; and (3) for black sea bass, a 12.5-inch (31.8-cm) minimum size, a 15-fish possession limit for January 1–February 28, and a 25-fish possession limit and open seasons of May 19 through October 14 and November 1 through December 31. The status quo alternative is: (1) For summer flounder, conservation equivalency, with precautionary default measures of a 20-inch (50.8-cm) minimum fish size, a 2-fish possession limit, and an open season of May 1 through September 30; (2) for scup and black sea bass, the same as the no action alternative. The proposed alternative is: (1) For summer flounder, the same as the status quo alternative; (2) for scup, a 10-inch (25.4-cm) minimum fish size, a 30-fish possession limit, and an open season of January 1 through December 31; and (3) for black sea bass, a 12.5-inch (31.8-cm) minimum fish size, and a 20-fish possession limit for open seasons of May 19 through October 14 and November 1 through December 31.

The impacts of the alternatives 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.

Because the proposed action is as or less restrictive than the other alternatives considered and provides the same or more opportunity for recreational fishing, the affected regulated entities are expected to be able to maximize fishery-related revenue under the preferred alternative relative to the non-preferred alternatives. The preferred alternative for scup would decrease the minimum size and increase the possession limit, and the preferred alternative for black sea bass is only slightly more restrictive than the status quo. In contrast, the non-preferred alternatives for scup would result in a larger minimum size and a lower possession limit, and the non-preferred alternatives for black sea bass that would not constrain recreational landings to appropriate level.

For summer flounder, the preferred alternative for conservation equivalency is expected to increase fishing opportunities because, under the Commission's plan, almost all states are authorized to increase landings in 2013. The Commission has also proposed an addendum to implement 2013 recreational fishing rules for summer flounder similar to those from 2012, partly to minimize the reductions facing two states (New York and New Jersey) and partly to allow for the more equitable distribution of fishing opportunities in the 2013 season. The proposed approach is intended to allow states to capitalize on harvest opportunities that are foregone by states that choose not to fully utilize their 2013 harvest target. Specifically, the addendum proposes a mechanism to allow states access to the summer flounder recreational harvest limit that is projected to not be harvested in 2013. The Addendum responds to an unintended consequence of using conservation equivalency to stay within the annually established coastwide recreational harvest limit for summer flounder, and to respond to the changes

in the fishery since the 1998 state landings targets were established.

NMFS did not consider any alternatives that would provide additional fishing opportunities beyond what was recommended by the Council because any such alternative would increase the risk of the fishery exceeding the recreational harvest limit, which could result in overfishing the stock and/or exceeding the annual catch limit. This would be contrary to the goals and objectives of the Magnuson-Stevens Act.

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 24, 2013.

**Alan D. Risenhoover,**

*Director, Office of Sustainable Fisheries, performing the functions and duties of the Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.*

For the reasons set out in the preamble, 50 CFR part 648 is proposed to be amended as follows:

**PART 648—FISHERIES OF THE NORTHEASTERN UNITED STATES**

■ 1. The authority citation for part 648 continues to read as follows:

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

■ 2. In § 648.104, paragraph (b) is revised to read as follows:

**§ 648.104 Summer flounder minimum fish sizes.**

\* \* \* \* \*

(b) *Party/charter permitted vessels and recreational fishery participants.* Unless otherwise specified pursuant to § 648.107, the minimum size for summer flounder is 18 inches (45.7 cm) TL for all vessels that do not qualify for a moratorium permit under § 648.4(a)(3), 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.

\* \* \* \* \*

■ 3. In § 648.106, paragraph (a) is revised to read as follows:

**§ 648.106 Summer flounder possession restrictions.**

(a) *Party/charter and recreational possession limits.* Unless otherwise specified pursuant to § 648.107, no person shall possess more than four

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. Persons aboard a commercial vessel that is not eligible for a summer flounder moratorium permit are subject to this possession limit. The owner, operator, and crew of a charter or party boat issued a summer flounder moratorium permit are subject to the possession limit when carrying passengers for hire or when carrying more than five crew members for a party boat, or more than three crew members for a charter boat. This possession limit may be adjusted pursuant to the procedures in § 648.102.

\* \* \* \* \*

■ 4. Section 648.107 is 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 2013 are the conservation equivalent of the season, minimum fish size, and possession limit prescribed in §§ 648.104(b), 648.105, and 648.106(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 §§ 648.104(b), 648.105, and 648.106(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.

■ 5. In § 648.126, paragraph (b) is revised to read as follows:

**§ 648.126 Scup minimum fish sizes.**

\* \* \* \* \*

(b) *Party/Charter permitted vessels and recreational fishery participants.* The minimum size for scup is 10 inches (25.4 cm) TL for all vessels that do not have a moratorium permit, or for party and charter vessels that are issued a moratorium permit but are fishing with passengers for hire, or carrying more than three crew members if a charter boat, or more than five crew members if a party boat.

\* \* \* \* \*

■ 6. Section 648.127 is revised to read as follows:

**§ 648.127 Scup recreational fishing season.**

Fishermen and vessels that are not eligible for a moratorium permit under § 648.4(a)(6), may possess scup year-round, subject to the possession limit specified in § 648.128(a). The recreational fishing season may be adjusted pursuant to the procedures in § 648.122.

■ 7. In § 648.128, paragraph (a) is revised to read as follows:

**§ 648.128 Scup possession restrictions.**

(a) *Party/Charter and recreational possession limits.* No person shall possess more than 30 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. Persons aboard a commercial vessel that is not eligible for a scup moratorium permit are subject to this possession limit. The owner, operator, and crew of a charter or party boat issued a scup moratorium permit are subject to the possession limit when

carrying passengers for hire or when carrying more than five crew members for a party boat, or more than three crew members for a charter boat. This possession limit may be adjusted pursuant to the procedures in § 648.122.

\* \* \* \* \*

■ 8. In § 648.145, paragraph (a) is revised to read as follows:

**§ 648.145 Black sea bass possession limit.**

(a) During the recreational fishing season specified at § 648.146, no person shall possess more than 20 black sea bass in, or harvested from, the EEZ unless that person is the owner or operator of a fishing vessel issued a black sea bass moratorium permit, or is issued a black sea bass dealer permit. Persons aboard a commercial vessel that is not eligible for a black sea bass moratorium permit may not retain more than 20 black sea bass during the recreational fishing season specified at § 648.146. The owner, operator, and crew of a charter or party boat issued a black sea bass moratorium permit are subject to the possession limit when carrying passengers for hire or when carrying more than five crew members for a party boat, or more than three crew members for a charter boat. This possession limit may be adjusted pursuant to the procedures in § 648.142.

\* \* \* \* \*

■ 9. Section 648.146 is revised to read as follows:

**§ 648.146 Black sea bass recreational fishing season.**

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 only possess black sea bass from May 19 through October 14, and November 1 through December 31, unless this time period is adjusted pursuant to the procedures in § 648.142.

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