

**DEPARTMENT OF COMMERCE****National Oceanic and Atmospheric Administration****50 CFR Part 648**

[Docket No. 050304059–5059–01; I.D. 022805D]

RIN 0648–AS21

**Fisheries of the Northeastern United States; Recreational Measures for the Summer Flounder, Scup, and Black Sea Bass Fisheries; Fishing Year 2005**

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

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

**SUMMARY:** NMFS proposes recreational measures for the 2005 summer flounder, scup, and black sea bass fisheries. The implementing regulations for these fisheries require NMFS to publish recreational measures for the upcoming 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 March 30, 2005.

**ADDRESSES:** Copies of supporting documents used by the Summer Flounder, Scup, and Black Sea Bass Monitoring Committees and of the Environmental Assessment, Regulatory Impact Review, and Initial Regulatory Flexibility Analysis (EA/RIR/IRFA) are available from Daniel Furlong, Executive Director, Mid-Atlantic Fishery Management Council, Room 2115, Federal Building, 300 South Street, Dover, DE 19901–6790. The EA/RIR/IRFA is also accessible via the Internet at <http://www.nero.noaa.gov>.

You may submit comments by any of the following methods:

- E-mail: [FSBREC05@noaa.gov](mailto:FSBREC05@noaa.gov). Include in the subject line the following identifier: “Comments on Summer Flounder, Scup, and Black Sea Bass Recreational Measures.”
- Federal e-Rulemaking portal: <http://www.regulations.gov>.
- Mail: Patricia A. Kurkul, Regional Administrator, NMFS, Northeast Regional Office, One Blackburn Drive, Gloucester, MA 01930. Mark the outside of the envelope: “Comments on Recreational Measures.”
- Fax: (978) 281–9135.

**FOR FURTHER INFORMATION CONTACT:**

Sarah McLaughlin, Fishery Policy Analyst, (978) 281–9279, fax (978) 281–

9135, e-mail [sarah.mclaughlin@noaa.gov](mailto:sarah.mclaughlin@noaa.gov).

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

The summer flounder, scup, and black sea bass fisheries are managed cooperatively by the Atlantic States Marine Fisheries Commission (Commission) and the Mid-Atlantic Fishery Management Council (Council), in consultation with the New England and South Atlantic Fishery Management Councils.

The management units specified in the Fishery Management Plan (FMP) for the Summer Flounder, Scup, and Black Sea Bass Fisheries include summer flounder (*Paralichthys dentatus*) in U.S. waters of the Atlantic Ocean from the southern border of North Carolina 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°15.3' N. lat. (the latitude of Cape Hatteras Lighthouse, Buxton, NC) northward to the U.S./Canada border.

The FMP and its implementing regulations, which are found at 50 CFR part 648, subparts A (general provisions), G (summer flounder), H (scup), and I (black sea bass), describe the process for specifying annual recreational measures that apply in the Exclusive Economic Zone (EEZ). The states manage these fisheries within 3 miles of their coasts, under the Commission's plan for summer flounder, scup, and black sea bass. The Federal regulations govern vessels fishing in the EEZ, as well as vessels possessing a Federal fisheries permit, regardless of where they fish.

The FMP established Monitoring Committees (Committees) for the three fisheries, consisting of representatives from the Commission, the Mid-Atlantic, New England, and South Atlantic Councils, and NMFS. The FMP and its implementing regulations require the Committees to review scientific and other relevant information annually and to recommend management measures necessary to achieve the recreational harvest limits established for the summer flounder, scup, and black sea bass fisheries for the upcoming fishing year. The FMP limits these measures to minimum fish size, possession limit, and fishing season.

The Council's Demersal Species Committee and the Commission's Summer Flounder, Scup, and Black Sea Bass Management Board (Board) then consider the Committees' recommendations and any public comment in making their

recommendations to the Council and the Commission, respectively. The Council then reviews the recommendations of the Demersal Species Committee, makes its own recommendations, and forwards them to NMFS for review. The Commission similarly adopts recommendations for the states. NMFS is required to review the Council's recommendations to ensure that they are consistent with the targets specified for each species in the FMP.

Final quota specifications for the 2005 summer flounder, scup, and black sea bass fisheries were published on January 4, 2005 (70 FR 303). These specifications were determined to be consistent with the 2005 target fishing mortality rate (F) (for summer flounder) and target exploitation rates (for scup and black sea bass). The 2005 coastwide recreational harvest limits are 11.98 million lb (5,434 mt) for summer flounder, 3.96 million lb (1,796 mt) for scup, and 4.13 million lb (1,873 mt) for black sea bass. The specifications did not establish recreational measures, since final recreational catch data for 2004 were not available when the Council made its recreational harvest limit recommendation to NMFS.

All minimum fish sizes discussed below are total length measurements of the fish, i.e., the straight-line distance from the tip of the snout to the end of the tail while the fish is lying on its side. All possession limits discussed below are per person.

**Summer Flounder**

Overall, recreational landings for 2004 were estimated to be 10.7 million lb (4,853 mt), nearly 5 percent below the 2004 recreational harvest limit (by weight). However, the following states are projected to exceed their 2004 harvest limits when their allocations are converted to number of fish using the average weight of summer flounder harvested during 2003 and 2004: MA (16 percent over), RI (8 percent over), CT (34 percent over), NY (15 percent over), and NJ (2 percent over). The 2005 coastwide harvest limit is 11.98 million lb (5,434 mt), a 7-percent increase over the 2004 harvest limit, and 12 percent above the estimated 2004 landings. Assuming the same level of fishing effort in 2005, no reduction in landings coastwide would be required for summer flounder. However, as described below, under conservation equivalency, as recommended by the Council, MA, CT, and NY would be required to reduce summer flounder landings (in number of fish) in 2005 by 7 percent, 19 percent, and 6 percent, respectively.

NMFS implemented Framework Adjustment 2 to the FMP on July 29, 2001 (66 FR 36208), which established a process that makes conservation equivalency an option for the summer flounder recreational fishery. Conservation equivalency allows each state to establish its own recreational management measures (possession limits, minimum fish size, and fishing seasons), as long as the combined effect of all of the states' management measures achieves the same level of conservation as would Federal coastwide measures developed to achieve the recreational harvest limit, if implemented by all of the states. Conservation equivalency was approved for the 2004 summer flounder recreational fishery.

The Council and Board recommend annually that either state-specific recreational measures be developed (conservation equivalency) or coastwide management measures be implemented by all states to ensure that the recreational harvest limit will not be exceeded. Even when the Council and Board recommend conservation equivalency, the Council must specify a set of coastwide measures that would apply if conservation equivalency is not approved. If conservation equivalency is recommended, and following confirmation that the proposed state measures would achieve conservation equivalency, NMFS may waive the permit condition found at § 648.4(b), which requires federally permitted vessels to comply with the more restrictive management measures when state and Federal measures differ. 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. In addition, the Council and the Board must recommend precautionary default measures. The Commission would require adoption of the precautionary default measures by any state that either does not submit a summer flounder management proposal to the Commission's Summer Flounder Technical Committee, or that submits measures that are determined by the Board not to achieve the required reduction. The precautionary default measures are defined as the set of measures that would achieve the greatest reduction in landings required for any state.

In December 2004, the Council and Board voted to recommend conservation equivalency to achieve the 2005 recreational harvest limit. The

Commission's conservation equivalency guidelines require each state, using state-specific equivalency tables, to determine and implement an appropriate possession limit, minimum fish size, and closed season to achieve the landings reduction necessary for each state. The state-specific tables are adjusted to account for the past effectiveness of the regulations in each state. Landings projections for 2004 indicate that MA, CT, and NY will be the only states required to reduce recreational summer flounder landings in 2005, by 7 percent, 19 percent, and 6 percent, respectively. The other states (from ME to NC) would not require any reductions in recreational summer flounder landings if their current regulations are maintained.

The Board required that each state submit its conservation equivalency proposal to the Commission by January 15, 2005. The Commission's Summer Flounder Technical Committee then evaluated the proposals and advised the Board of each proposal's consistency with respect to achieving the coastwide recreational harvest limit. The Commission has invited public participation in its review process by holding public meetings and offering the public the opportunity to comment on the state proposals. The Board met on February 7, 2005, and approved all of the state management proposals. For some states, the Board approved multiple management options. Once these states select and submit their final summer flounder management measures to the Commission, the Commission officially will notify NMFS as to which state proposals have been approved or disapproved. NMFS retains the final authority to either approve or disapprove using conservation equivalency in place of the coastwide measures and will publish its determination in the final rule establishing the 2005 recreational measures for these fisheries.

States that do not submit conservation equivalency proposals, or for which proposals were disapproved by the Commission, would 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).

As described above, for each fishing year, NMFS implements either coastwide measures or conservation equivalent measures at the final rule stage. The coastwide measures

recommended by the Council and Board for 2005 are the same as those recommended for 2004 and consist of a 17-inch (43.2-cm) minimum fish size, a possession limit of four fish, and no closed season. In this action, NMFS proposes to maintain these coastwide measures in the EEZ. If implemented, the coastwide measures would reduce recreational landings by 18 percent, based on 2001 data, assuming the coastwide regulations are implemented by all states. State-specific reductions in landings would range from 0 percent in MD to 63 percent in NC. These measures would be waived if conservation equivalency is approved.

The precautionary default measures specified by the Council and Board are the same as specified for 2004 and consist of an 18-inch (45.7-cm) minimum fish size, a possession limit of one fish, and no closed season. These measures would reduce recreational landings by 62 percent, based on 2001 data, assuming the coastwide regulations are implemented by all states. State-specific reductions in landings would range from 41 percent in DE to 88 percent in NC.

#### Scup

For 2005, the Total Allowable Landings of scup was maintained at the 2004 level. As a result of a slightly larger research set-aside amount for 2005 than for 2004, the 2005 scup recreational harvest limit is 3.96 million lb (1,796 mt), a less than 1-percent decrease from the 2004 harvest limit of 3.99 million lb (1,810 mt). Recreational landings in 2004 were estimated to be 4.34 million lb (1,969 mt), approximately 9 percent above the 2004 harvest limit. To achieve the 2005 target, a 9-percent reduction in landings relative to landings in 2004 is necessary.

The 2005 scup recreational fishery will be managed under separate regulations for state and Federal waters; the Federal measures would apply to party/charter boats with Federal permits and other vessels subject to the possession limit that fish in the EEZ. In Federal waters, to achieve the 2005 target, the Council recommended the status quo coastwide management measures of a 10-inch (25.4-cm) minimum fish size, a 50-fish possession limit, and open seasons of January 1 through February 28, and September 7 through November 30. The Council has indicated that the status quo measures could achieve the 9-percent required reduction based on the average percent standard error (PSE) for scup landings (over the 1994–2003 period) estimated from the Marine Recreational Fisheries Statistics Survey (MRFSS). The Council

suggests that the 2005 harvest limit is within the average observed PSE's, or margin of error for estimates of landings in pounds, and that no additional restrictions are required.

As in the past 3 years, the scup fishery in state waters will be managed under a regional conservation equivalency system developed through the Commission. Addendum XI to the Interstate FMP (Addendum XI), approved by the Board at the January 2004 Council/Commission meeting, requires that the states of MA through NY each develop state-specific management measures to constrain their landings to an annual harvest level in number of fish (a total of 4.2 million fish for 2005), through a combination of minimum fish size, possession limits, and seasonal closures. Because the Federal FMP does not contain provisions for conservation equivalency, and states may adopt their own unique measures under Addendum XI, the Federal and state recreational scup management measures will differ for the 2005 season.

At the February 7, 2005, meeting, the Board approved a regional management proposal for MA through NY that would allow a season of at least 120 days, a minimum fish size of 10.5 inches (26.7 cm), and a common possession limit (25 fish for private vessels and shore-based anglers; and 60 fish for party/charter vessels, dropping to 25 fish after a 2-month period). The Board indicated that it would allow MA through NY to set a more conservative, i.e., higher, minimum fish size to allow for longer open seasons. These northern states are expected to submit their final management measures to the Commission by April 1, 2005. For NJ, the Board approved measures of a 9-inch (22.9-cm) minimum size, a 50-fish possession limit, and open seasons of January 1 through February 28, and July 1 through December 31, with the provision that, if NJ's catch exceeds 3 percent of the total coastwide catch for 2005, the minimum size will revert to 10 inches (25.4 cm) (the minimum size implemented for the 2004 fishing season). Due to low scup landings in the southern states, DE through NC, the Board approved the retention of status quo management measures, i.e., an 8-inch (20.3-cm) minimum fish size, a 50-fish possession limit, and no closed season.

#### *Disapproval of Council's Preferred Scup Alternative and Request for Public Comment*

After careful review, NMFS has decided to disapprove the Council's scup recommendation (Scup Alternative

1, the Council's Preferred Scup Alternative) because analysis of the materials considered by the Scup Monitoring Committee indicates that accepting this recommendation would not result in the achievement of the 2005 scup recreational target. The Council's recommendation to maintain the status quo measures for scup would result in a deviation from how NMFS has managed the Federal recreational scup fishery, i.e., through the setting of minimum fish size, possession limits, and fishing seasons that are determined to achieve the landings reductions needed to achieve the FMP's target exploitation rate. Further, the approach suggested by the Council has not undergone technical review by the Scup Monitoring Committee.

The Council submission also analyzed the following two alternatives that are expected to reduce recreational landings by the required 9 percent: (1) A 10-inch (25.4-cm) minimum fish size, a 50-fish possession limit, and open seasons of January 1 through February 28, and September 18 through November 30; and (2) a 10-inch (25.4-cm) minimum fish size, a 50-fish possession limit, and open seasons of January 1 through February 28, and September 12 through September 30. NMFS is hereby requesting public comment on these alternatives (defined later in this document and referred to as Scup Alternatives 2 and 3, respectively) for possible implementation in the final rule. The impacts associated with Scup Alternatives 2 and 3 are described in the Council's submission and are summarized in the Classification section of this proposed rule.

NMFS is proposing Scup Alternative 2 for publication in the proposed regulatory text. However, depending upon public comment, NMFS may instead implement Scup Alternative 3. Should Scup Alternative 3 ultimately be chosen, NMFS will publish the corresponding regulations in the final rule.

#### **Black Sea Bass**

Recreational landings in 2004 were estimated to be 1.72 million lb (780 mt), 57 percent below the 2004 target of 4.01 million lb (1,819 mt). Because the 2005 black sea bass recreational harvest limit is 4.13 million lb (1,873 mt), a 3-percent increase from the 2004 harvest limit, no coastwide reduction in landings is required.

Currently, the Federal coastwide black sea bass recreational measures are: A 25-fish possession limit; a minimum size of 12 inches (30.5 cm); and open seasons of January 1 through September 7, and September 22 through November

30. The Council and Board have approved measures that would maintain the 25-fish possession limit and the 12-inch (30.5-cm) minimum size, but would implement an open season of January 1 through December 31. These measures are expected to constrain recreational black sea bass landings to the 2005 target.

#### **Corrections to the Summer Flounder and Scup Regulations**

In addition to the specification of the 2005 recreational management measures for the summer flounder, scup, and black sea bass fisheries, this proposed rule contains two proposed corrections to the regulations at § 648.104. In the final rule to implement measures contained in Framework Adjustment 5 to the FMP (69 FR 62818, October 28, 2004), the paragraph referring to the requirements of the summer flounder small-mesh exemption area letter of authorization was inadvertently published as § 648.104(b)(1)(I) rather than § 648.104(b)(1)(i). This proposed rule would correct that reference. In the final rule to implement the 2005 annual summer flounder, scup, and black sea bass specifications, and other commercial scup measures (70 FR 303, January 4, 2005), the threshold level to trigger the scup minimum mesh size requirement for otter trawl vessels during the scup Summer period (May 1 through October 31) was increased from 100 lb (45.4 kg) to 200 lb (90.7 kg). This change should also have been reflected in § 648.104(e), the paragraph regarding stowage of nets by trawl vessels fishing for scup. This proposed rule would make that change to be consistent with the threshold level listed in the minimum mesh size regulations.

#### **Classification**

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

The Council prepared an IRFA that describes the economic impact this proposed rule, if adopted, would have on small entities.

A description of the action, why it is being considered, and the legal basis for this action are contained in the preamble to this proposed rule. This proposed rule does not duplicate, overlap, or conflict with other Federal rules. A copy of the complete IRFA is available from the Council (see **ADDRESSES**). A summary of the analysis follows.

The proposed action could affect any recreational angler who fishes for summer flounder, scup, or black sea bass in the EEZ or on a party/charter vessel issued a Federal permit for

summer flounder, scup, and/or black sea bass. However, the IRFA focuses upon the impacts on party/charter vessels issued a Federal permit for summer flounder, scup, and/or black sea bass because these vessels are considered small business entities for the purposes of the Regulatory Flexibility Act (RFA), i.e., businesses with receipts (gross revenues) of up to \$3.5 million. These small entities can be specifically identified in the Federal vessel permit database and would be impacted by the recreational measures, regardless of whether they fish in Federal or state waters. Although individual recreational anglers are likely to be impacted, they are not considered small entities under the RFA. Also, there is no permit requirement to participate in these fisheries; thus, it would be difficult to quantify any impacts on recreational anglers in general.

The Council estimated that the proposed measures could affect any of the 777 vessels possessing a Federal charter/party permit for summer flounder, scup, and/or black sea bass in 2003, the most recent year for which complete permit data are available. However, only 337 of these vessels reported active participation in the recreational summer flounder, scup, and/or black sea bass fisheries in 2003.

In the EA/IRFA, the no-action alternative (i.e., maintenance of the regulations as codified) is defined as implementation of the following: (1) For summer flounder, coastwide measures of a 17-inch (43.2-cm) minimum fish size, a 4-fish possession limit, and no closed season, i.e., the measure that would be implemented if conservation equivalency is not implemented in the final rule; (2) for scup, a 10-inch (25.4-cm) minimum fish size, a 50-fish possession limit, and open seasons of January 1 through February 28, and September 7 through November 30; and (3) for black sea bass, a 12-inch (30.5-cm) minimum size, a 25-fish possession limit, and an open season of January 1 through September 7, and September 22 through November 30.

The implications of the no-action alternative are substantial. For summer flounder, reductions in landings would range from 0 percent in MD to 63 percent in NC. The no-action alternative (i.e., maintenance of the regulations as codified) would not be restrictive enough to effect the recommended 9-percent reduction in scup landings relative to 2004, but would constrain black sea bass landings to the harvest limit for 2005. In consideration of the recreational harvest limits established for the 2005 fishing year, taking no

action in the summer flounder and scup fisheries would be inconsistent with the goals and objectives of the FMP and its implementing regulations because the coastwide summer flounder measures are more restrictive than necessary for most states and likely would not restrict recreational scup landings to the 2005 harvest limit. Because it could result in overfishing of the scup fishery, taking no action also would be inconsistent with National Standard 1 of the Magnuson-Stevens Fishery Conservation and Management Act.

Effects of the various management measures were analyzed by employing quantitative approaches, to the extent possible. Where quantitative data were not available, the Council conducted qualitative analyses. Although NMFS's RFA guidance recommends assessing changes in profitability as a result of proposed measures, the quantitative impacts were instead evaluated using changes in party/charter vessel revenues as a proxy for profitability. This is because reliable cost data are not available for these fisheries. Without reliable cost 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.

Assessments of potential changes in gross revenues for all 18 combinations of alternatives proposed in this action were conducted for federally permitted party/charter vessels in each state in the Northeast Region (NE). Management measures proposed under the summer flounder conservation equivalency alternative have yet to be adopted; therefore, potential losses under this alternative could not be analyzed in conjunction with alternatives proposed for scup and black sea bass. Since conservation equivalency allows each state to tailor specific recreational fishing measures to the needs of that state, while still achieving conservation goals, it is likely that the measures developed under this alternative, when considered in combination with the measures proposed for scup and black sea bass, would have fewer overall adverse effects than any of the other combinations that were analyzed.

Impacts were examined by first estimating the number of angler trips aboard party/charter vessels in each state in 2004 that would have been affected by the proposed 2005 management measures. All 2004 party/charter fishing trips that would have

been constrained by the proposed 2005 measures in each state were considered to be affected trips.

There is very little information available to estimate empirically how sensitive the affected party/charter vessel anglers might be to the proposed fishing regulations, with the exception of states for which the contribution of summer flounder, scup, and black sea bass to the total catch by party/charter vessels is negligible (ME and NH) and DE, for which results are suppressed for confidentiality purposes. If the proposed measures discourage trip-taking behavior among some of the affected anglers, economic losses may accrue to the party/charter vessel industry in the form of reduced access fees. On the other hand, if the proposed measures do not have a negative impact on the value or satisfaction the affected anglers derive from their fishing trips, party/charter revenues would remain unaffected by this action. In an attempt to estimate the potential changes in gross revenues to the party/charter vessel industry in each state, two hypothetical scenarios were considered: A 25-percent reduction, and a 50-percent reduction, in the number of fishing trips that are predicted to be affected by implementation of the management measures in the NE (ME through NC) in 2005.

Total economic losses to party/charter vessels were then estimated by multiplying the number of potentially affected trips in each state in 2005, under the two hypothetical scenarios, by the estimated average access fee paid by party/charter anglers in the NE in 2004. Finally, total economic losses were divided by the number of federally permitted party/charter vessels that participated in the summer flounder, scup, and/or, black sea bass fisheries in 2003 in each state (according to homeport state in the NE database) to obtain an estimate of the average projected gross revenue loss per party/charter vessel in 2005.

The MRFSS data indicate that anglers fished 33.94 million days in 2004 in the NE. In the NE, party/charter anglers comprised about 5 percent of the angler fishing days. The number of trips in each state ranged from approximately 39,000 in CT to approximately 433,000 in NJ. The number of trips that targeted summer flounder, scup, and/or black sea bass was identified, as appropriate, for each measure, and the number of trips that would be impacted by the proposed measures was estimated. Finally, the revenue impacts were estimated by calculating the average fee paid by anglers on party/charter vessels in the NE in 2004 (\$38.93 per angler),

and the revenue impacts on individual vessels were estimated. The analysis assumed that angler effort and catch rates in 2005 will be similar to 2004.

The Council noted that this method is likely to result in overestimation of the potential revenue losses that would result from implementation of the proposed coastwide 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 (more than 90 percent of summer flounder and scup landings in 2003), it is probable that some party/charter vessels fish only in state waters and, thus, do not hold Federal permits for these fisheries. Third, vessels that hold only state permits likely will be fishing under different, potentially less restrictive, recreational measures for summer flounder in state waters, if such program is implemented in the final rule, and for scup in state waters under the Commission's scup conservation equivalency program.

#### *Impacts of Summer Flounder Alternatives*

The proposed action for the summer flounder recreational fishery would limit coastwide catch to 11.98 million lb (5,434 mt) by imposing coastwide Federal measures throughout the EEZ. As described earlier, upon confirmation that the proposed state measures would achieve conservation equivalency, NMFS may waive the permit condition found at § 648.4(b), which requires federally permitted vessels to comply with the more restrictive management measures when state and Federal measures differ. Federally permitted charter/party permit holders and recreational vessels fishing for summer flounder in the EEZ then would be subject to the recreational fishing measures implemented by the state in which they land summer flounder, rather than the coastwide measures.

The impact of the proposed summer flounder conservation equivalency alternative (in Summer Flounder Alternative 1) among states is likely to be similar to the level of landings reductions that are required of each state. As indicated above, only MA, CT, and NY would be required to reduce summer flounder landings in 2005, relative to their 2004 landings (by 7 percent, 19 percent, and 6 percent, respectively). If the preferred conservation equivalency alternative is effective at achieving the recreational harvest limit, then it is likely to be the only alternative that minimizes adverse economic impacts, to the extent practicable, yet achieves the biological objectives of the FMP. Because states have a choice, it is more rational (and is expected) that the states would adopt conservation equivalent measures that result in fewer adverse economic impacts than the much more restrictive precautionary default measures (i.e., only one fish measuring at least 18 inches (45.7 cm)). Therefore, the precautionary default provision that is included in the conservation equivalency proposal was not analyzed as a stand-alone provision. The state-specific landings reductions (relative to landings in these states in 2004) associated with the precautionary default measures, consisting of an 18-inch (45.7-cm) minimum fish size, a one-fish possession limit, and no closed season, would range from 41 percent (DE) to 88 percent (NC).

The impacts of the proposed, no-action summer flounder coastwide alternative (Summer Flounder Alternative 2), i.e., a 17-inch (43.2-cm) minimum fish size, a four-fish possession limit, and no closed season, were evaluated using the quantitative method described above. Impacted trips were defined as individual angler trips taken aboard party/charter vessels in 2004 that landed at least one summer flounder smaller than 17 inches (43.2 cm), or that landed more than four summer flounder. The analysis concluded that the measures would affect 0.5 percent of the party/charter vessel trips in the NE.

#### *Impacts of Scup Alternatives*

The proposed action for scup would limit coastwide landings to 3.96 million lb (1,796 mt) and reduce landings by at least 9 percent compared to 2004.

For Scup Alternative 1 (a 10-inch (25.4-cm) minimum fish size, a 50-fish possession limit, and open seasons of January 1 through February 28, and September 7 through November 30), the no-action alternative and the Council's preferred scup alternative, impacted

trips were defined as individual angler trips taken aboard party/charter vessels in 2004 that landed at least 1 scup smaller than 10 inches (25.4 cm), that landed more than 50 scup, or that landed at least 1 scup during the proposed closed seasons of March 1 through September 6, and December 1 through December 31. The analysis concluded that the measures would affect 2.6 percent of party/charter vessel trips in the NE.

For Scup Alternative 2 (a 10-inch (25.4-cm) minimum fish size, a 50-fish possession limit, and open seasons of January 1 through February 28, and September 18 through November 30), the proposed action, impacted trips were defined as individual angler trips taken aboard party/charter vessels in 2004 that landed at least 1 scup smaller than 10 inches (25.4 cm), that landed more than 50 scup, or that landed at least 1 scup during the periods of March 1 through September 17, and December 1 through December 31. The analysis concluded that the measures would affect 3.2 percent of party/charter vessel trips in the NE.

For the non-preferred scup measures (Scup Alternative 3: A 10-inch (25.4-cm) minimum fish size, a 50-fish possession limit, and open seasons of January 1 through February 28, and September 12 through September 30), impacted trips were defined as individual angler trips taken aboard party/charter vessels in 2004 that landed at least 1 scup smaller than 10 inches (25.4 cm), that landed more than 50 scup, or that landed at least 1 scup during the period March 1 through September 11, and October 1 through December 31. The analysis concluded that the measures in this alternative would affect 3.8 percent of party/charter vessel trips in the NE.

#### *Impacts of Black Sea Bass Alternatives*

The proposed action for black sea bass would limit coastwide landings to 4.13 million lb (1,873 mt). For the preferred black sea bass alternative (Black Sea Bass Alternative 1: A 12-inch (30.5-cm) minimum size, a 25-fish possession limit, and an open season of January 1 through December 31), impacted trips were defined as individual angler trips taken aboard party/charter vessels in 2004 that landed at least 1 black sea bass smaller than 12 inches (30.5 cm), or that landed more than 25 black sea bass. The analysis concluded that the measures would affect 0.1 percent of party/charter vessel trips in the NE.

For Black Sea Bass Alternative 2 (a 12-inch (30.5-cm) minimum size, a 25-fish possession limit, and an open season of January 1 through September

7, and September 22 through November 30), the no-action and non-preferred alternative, impacted trips were defined as individual angler trips taken aboard party/charter vessels in 2004 that landed at least 1 black sea bass smaller than 12 inches (30.5 cm), that landed more than 25 black sea bass, or that landed at least 1 black sea bass during the period September 8 through September 21, and December 1 through December 31. The analysis concluded that the measures would affect 0.2 percent of party/charter vessel trips in the NE.

For the non-preferred black sea bass measures considered in Black Sea Bass Alternative 3 (a 12-inch (30.5-cm) minimum size, a 25-fish possession limit, and an open season of January 1 through November 30), impacted trips were defined as individual angler trips taken aboard party/charter vessels in 2004 that landed at least 1 black sea bass smaller than 12 inches (30.5 cm), that landed more than 25 black sea bass, or that landed at least 1 black sea bass during the period of December 1 through December 31. The analysis concluded that the measures would affect 0.1 percent of party/charter trips in the NE.

#### *Combined Impacts of Summer Flounder, Scup, and Black Sea Bass Alternatives*

Since the management measures under Summer Flounder Alternative 1 (i.e., conservation equivalency) have yet to be adopted, the effort effects of this alternative could not be analyzed in conjunction with the alternatives proposed for scup and black sea bass. The percent of total party/charter vessel trips in the NE that were estimated to be affected by the other alternatives ranged from a low of 3 percent for the combination of measures proposed under Summer Flounder Alternative 2, Scup Alternative 1, and Black Sea Bass Alternative 1 or 3; to a high of 10.8 percent for the precautionary default measures for summer flounder (considered in Summer Flounder Alternative 1) combined with the measures proposed under Scup Alternative 3 and Black Sea Bass Alternative 2.

Potential revenue losses in 2005 could differ for 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 proposed for summer flounder, scup, and black sea bass are predicted to affect party/charter vessel revenues to some extent in 9 of the 11 NE coastal states. Angler effort aboard party/charter vessels in 2005 in ME and NH is not predicted to be constrained (i.e., affected) by the proposed measures, thus party/charter revenues for vessels operating in these states are not estimated to be impacted. In addition, although potential losses were estimated for party/charter vessels operating out of DE, these results are suppressed for confidentiality purposes. Average party/charter losses for federally permitted vessels operating in the remaining states are estimated to vary considerably across the 18 combinations of alternatives. For instance, in NY, average losses are predicted to range from \$1,917 per vessel under the combined effects of Summer Flounder Alternative 2, Scup Alternative 1, and Black Sea Bass Alternative 1, to \$8,817 per vessel under the combined effects of the summer flounder precautionary default (considered in Summer Flounder Alternative 1), Scup Alternative 3, and Black Sea Bass Alternative 3 (assuming a 25-percent reduction in affected effort).

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

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

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: March 10, 2005.

**John Oliver,**  
Deputy Assistant Administrator for  
Operations, 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, the first sentence of paragraph (b)(1) is revised to read as follows:

#### **§ 648.104 Gear restrictions.**

\* \* \* \* \*

(b) \* \* \*

(1) Vessels issued a summer flounder moratorium permit, a summer flounder small-mesh exemption area letter of authorization (LOA), required under paragraph (b)(1)(i) of this section, and fishing from November 1 through April 30 in the exemption area, which is east of the line that follows 72°30.0' W. long, until it intersects the outer boundary of the EEZ (copies of a map depicting the area are available upon request from the Regional Administrator). \* \* \*

\* \* \* \* \*

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

#### **§ 648.122 Season and area restrictions.**

\* \* \* \* \*

(g) *Time restrictions.* Vessels that are not eligible for a moratorium permit under § 648.4(a)(6), and fishermen subject to the possession limit, may not possess scup, except from January 1 through the last day of February, and from September 18 through November 30. This time period may be adjusted pursuant to the procedures in § 648.120.

4. In § 648.123, the first sentence of paragraph (a)(5) is revised to read as follows:

#### **§ 648.123 Gear restrictions.**

(a) \* \* \*

(5) \* \* \* The owner or operator of an otter trawl vessel retaining 500 lb (226.8 kg) or more of scup from November 1 through April 30, or 200 lb (90.7 kg) or more of scup from May 1 through October 31, and subject to the minimum mesh requirements in paragraph (a)(1) of this section, and the owner or operator of a midwater trawl or other trawl vessel subject to the minimum size requirement in § 648.122, may not have available for immediate use any net, or any piece of net, not meeting the minimum mesh size requirement, or mesh that is rigged in a manner that is inconsistent with the minimum mesh size. \* \* \*

\* \* \* \* \*

5. 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, may possess black sea bass from January 1 through December 31, unless this time period is adjusted pursuant to the procedures in § 648.140.

[FR Doc. 05-5108 Filed 3-14-05; 8:45 am]

**BILLING CODE 3510-22-S**