

provide sufficient information on the status and distribution of a petitioned species. We have reviewed the petition and other readily available information and literature in our files.

We find the petition does not present substantial information to indicate that the listed actions may be warranted.

References Cites

1996 IUCN Red List of Threatened Animals

Author: The primary author of this finding is Dr. Susan Lieberman, U.S. Fish and Wildlife Service, Office of Scientific Authority, (see **ADDRESSES** section).

Authority: The authority for this action is the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Dated: August 9, 2000.

Jamie Rappaport Clark,

Director, Fish and Wildlife Service.

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 000809230-0230-01; I.D. 062000D]

RIN 0648-AM46

Fisheries of the Northeastern United States; Fishery Management Plan for the Summer Flounder, Scup, and Black Sea Bass Fisheries; Recreational Measures for the 2000 Fisheries

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 2000 summer flounder 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 and black sea bass resources.

EFFECTIVE DATE: Comments must be received at the appropriate address or fax number (see **ADDRESSES**) no later than 5 p.m., local time, on September 15, 2000.

ADDRESSES: Copies of supporting documents used by the Summer

Flounder, Scup, and Black Sea Bass Monitoring Committees and of the Environmental Assessment and Regulatory Impact Review are available from Dan Furlong, Executive Director, Mid-Atlantic Fishery Management Council, Room 2115, Federal Building, 300 South New Street, Dover, DE 19904-6790.

Written comments on the proposed specifications should be sent to Patricia A. Kurkul, Regional Administrator, Northeast Region, NMFS, One Blackburn Drive, Gloucester, MA 01930-2298. Mark on the outside of the envelope, "Comments—2000 Summer Flounder and Black Sea Bass Recreational Measures." Comments may also be sent via facsimile (fax) to (978) 281-9135. Comments will not be accepted if submitted via e-mail or Internet.

FOR FURTHER INFORMATION CONTACT:

Myles Raizin, Fishery Policy Analyst, (978) 281-9104, fax (978) 281-9135, e-mail myles.a.raizin@noaa.gov.

SUPPLEMENTARY INFORMATION:

Background

The Fishery Management Plan for the Summer Flounder, Scup, and Black Sea Bass Fisheries (FMP) outlines the process for specifying annual recreational measures. The FMP has established Monitoring Committees (Committees) for each of the three fisheries composed of representatives from the Atlantic States Marine Fisheries Commission (Commission), the Mid-Atlantic Fishery Management Council (Council), the New England and South Atlantic Fishery Management Councils, and NMFS. The Committees are required to review annually scientific and other relevant information and to recommend measures necessary to achieve the recreational harvest limits for the summer flounder, scup, and black sea bass fisheries. These measures are limited to minimum fish sizes, possession limits, and closed seasons. The Council's Demersal Species Committee and the Commission's Summer Flounder, Scup, and Black Sea Bass Board (Board) then consider the Committees' recommendations and any public comment in making their recommendations to the Council. The Council reviews the Demersal Committee recommendations, makes its own decision, in turn, and submits its recommendation to NMFS.

Final specifications for the 2000 summer flounder, scup, and black sea bass fisheries were published on May 24, 2000 (65 FR 33486), and included a coastwide recreational harvest limit of 7.41 million lb (3.361 million kg) for summer flounder, 1.24 million lb (0.562

million kg) for scup, and 3.14 million lb (1.42 million kg) for black sea bass. Recreational measures were not established as part of those specifications, since final recreational catch data were not available when the Council made its recommendation to NMFS.

Scup

On January 12, 2000, the Council submitted the annual recreational measures for the FMP. The submission proposed measures for scup that included a minimum size of 7 inches (17.78 cm) total length (TL) with a 50-fish possession limit and no closed season. After careful review of the Council's submission of recommendations for recreational measures for the scup fishery, NMFS returned the scup submission to the Council on March 10, 2000, because the Council submission indicated the proposed measures would result in landings in excess of the 1.24 million lb (0.562 million kg) recreational harvest. The 2000 harvest limit recommended by the Council was unchanged from the 1999 level. However, based on the estimated 1999 recreational harvest of scup of 1.82 million lb (0.899 million kg), a 32-percent reduction in harvest would be required to prevent landings from exceeding the harvest limit.

The Council analysis compared its recommendation of a minimum size of 7 inches (17.78 cm) TL with a 50-fish possession limit and no closed season yields to the 1999 measures, which imposed the 7-inch (17.78-cm) minimum size only. The analysis indicates the Council's proposal would achieve only a 1-percent reduction from the estimated 1999 level. The documents accompanying the Council recommendation did not provide justification for this divergence based on biological factors. Because there was insufficient information in the submission for NMFS to develop an acceptable alternative, the submission was returned to the Council. Pending a resubmission of scup measures by the Council, a minimum size limit of 7 inches (17.78 cm) remains in effect for scup in Federal waters, with the individual states regulating recreational scup fishing in their waters.

Summer Flounder

NMFS specified 2000 quotas for the summer flounder fishery which include a TAL of 18.52 million lb (8.40 million kg), a commercial quota of 11.11 million lb (5.039 million kg), and a recreational harvest limit of 7.41 million lb (3.361 million kg).

Current summer flounder recreational measures require a 15-inch (3,810-cm) TL minimum size, an 8-fish possession limit, and an open season from May 29 to September 11. When it made its recommendation, the Council used available Marine Recreational Fisheries Statistical Survey (MRFSS) data through October to project total 1999 landings of 8.5 million lb (3.855 million kg) or 15 percent more than the 7.41-million lb (3.361-million kg) recreational harvest limit for 1999. Final MRFSS landings figures of 8.4 million lb (3.81 million kg) now available uphold the projection. The fact that the management measures in 1999 resulted in landings in excess of a 7.41-million lb (3.361-million kg) harvest limit indicates that further constraints on the recreational fishery are required for 2000.

The Council and Commission met at the Council's December 1999 meeting and voted to recommend a 15.5-inch (39.27-cm) TL minimum fish size, an 8-fish possession limit, and an open season from May 10 to October 2 (*i.e.*, a closed season from January 1–May 9 and October 3–December 31) to meet the requirements of the 7.41-million lb (3.361-million kg) recreational harvest limit. Because regulations differed by state in 1999, the Council and Commission voted to base reductions on 1998 landings and on the number of fish, rather than on pounds of fish. In 1998, the regulations were consistent from state to state. As such, assuming recreational fishing effort in 2000 will be similar to that in 1998, a 41-percent reduction in recreational landings (in number of fish) is needed to achieve the recreational harvest limit of 7.41 million lb (3.361 million kg) for 2000. Assuming a 95 percent compliance rate, the Council's recommendation could reduce recreational landings by 44 percent.

Under an interim rule that is effective until September 5, 2000 (March 7, 2000; 65 FR 11909), the states can select a different combination of minimum fish sizes, possession limits, and closed seasons that result in the 41-percent reduction required to achieve the harvest limit in 2000. The interim regulations specify that the default measures will be the measures published in the final rule to implement annual summer flounder recreational measures, and equivalency of any other measures proposed by a state will be determined in comparison to those measures. Once a state's equivalency proposal is approved by the Commission, the Commission will recommend to NMFS that a notification be published in the **Federal Register** to waive the default measure and notify the public of the equivalent measures.

The Council is developing an amendment to the FMP that will consider a permanent measure to implement conservation equivalencies.

On April 25, 2000, during the last stages of review of the final specifications for the 2000 summer flounder, scup, and black sea bass fisheries, published on May 24, 2000, the United States Court of Appeals for the District of Columbia Circuit (Court) issued an opinion on a challenge to the 1999 summer flounder specifications by a number of environmental groups. The Court noted that the 1999 quota, when adopted, had only an 18-percent likelihood of meeting the conservation goals of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). The Court invalidated the 1999 quota and remanded the case to NMFS for further proceedings. The Court set a minimum standard for harvest quotas to comply with the Magnuson-Stevens Act, namely that quotas must have at least a 50-percent probability of achieving the target fishing mortality rate. The preamble to the final specifications for the 2000 summer flounder, scup, and black sea bass fisheries, published on May 24, 2000, stated that NMFS considers it a matter of the highest urgency to address the remand of the Court and will work with the Council and the Commission to implement the decision.

Black Sea Bass

The FMP specifies that the 2000 TAL will be allocated to the commercial and recreational fisheries based on relative landings for the period 1983 to 1992. Based on a TAL of 6.17 million lb (2.798 million kg), the commercial quota is 3.02 million lb (1.37 million kg) (49 percent) for 2000, and the recreational harvest limit is 3.15 million lb (1.429 million kg) (51 percent), which is identical to the 1999 harvest limit. Using available data at the time the Council submitted its recommendations, landings for 1999 were projected to be 1.97 million lb (0.893 million kg) or 1.18 million lb (0.535 mt) less than the 1999 harvest limit. Final recreational landings data now available indicate landings were 1.95 million lb (0.884 million kg), upholding the projection. Current black sea bass recreational measures require a 10-inch (25.40-cm) TL minimum size, no possession limit, and no closed season. NMFS is publishing the recommendation of the Council which is to maintain these measures for the 2000 recreational fishery.

Classification

This proposed rule has been determined to be not significant for purposes of E.O. 12866.

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities, as follows:

The regulatory impact review [prepared by the Mid-Atlantic Fishery Management Council] analyzed various management measures from the standpoint of determining the resulting changes in revenue for party/charter vessels. Data on costs and revenues for party/charter vessels were not available. Therefore, revenues for party/charter vessels participating in these fisheries were estimated by employing various assumptions. The effects of measures were analyzed by employing quantitative approaches to the extent possible. Where quantitative data were not available, qualitative analyses were conducted. An estimated 1.468 million trips were taken by anglers aboard party and charter boats in 1998 in the Northeast Region. About 0.20 percent of those trips would have been affected by the implementation of the summer flounder measures proposed under the preferred alternative for the 2000 fishing year (15.5-inch (39.27-cm) total length (TL) size limit, 8-fish possession limit, and a closed season from January 1, to May 9, and October 3, to December 31). In other words, 2,935 (0.20 percent) angler trips taken aboard party/charter boats in 1998 landed at least one summer flounder that was less than 15.5 inches (39.27 cm) TL, landed more than 8 summer flounder, or landed at least one summer flounder during the proposed closed season. In 1998, an 8-fish possession limit and a 15-inch (38.10-cm) TL minimum size limit was in place. Thus, the proposed one-half inch size increase and the seasonal closure in 2000 would have affected 2,935 angler trips in 1998. Assuming angler effort in 2000 will be similar to 1998, party/charter boat revenues associated with these trips can be estimated by multiplying the number of potentially affected trips in 2000 by the average fee paid by anglers. Steinback *et al.* estimated that the average party/charter boat fee paid by anglers was \$52.00 in the Northeast Region in 1994. Adjusted to its 2000 equivalent (\$59.12) and multiplied by the number of potentially affected trips, this results in party and charter boat gross revenues of \$173,517. Analysis of Northeast logbook data indicated that 274 party/charter vessels participated in the summer flounder fishery in 1998. Assuming that the same number of vessels will participate in 2000, the potential impact per boat could be up to a \$633 (173,517/274) reduction in gross revenues, or a 0.20-percent reduction when compared to 1998. However, losses of this magnitude are not likely to occur, given that anglers will continue to have the ability to engage in catch and release fishing for summer flounder after they reach their possession limit or after the closed season,

and because of the numerous alternative target species available to anglers. Very little information is available to estimate empirically how sensitive the affected party/charter boat anglers might be to the proposed regulations. While keeping fish is moderately important to anglers in the Mid-Atlantic, over 42 percent of anglers in New England in 1994 indicated that catching fish to eat was not an important reason for their marine fishing. Although these anglers are not likely to be the ones constrained by the regulations, the findings of this study generally concur with previous studies that found non-catch reasons for participating in marine recreational fishing were rated much higher than keeping fish for food. In combination with the numerous alternative target species available to anglers, the findings of the Steinback et al. study suggest that at least some of the potentially affected anglers would not reduce their effort when faced with the landings restrictions proposed under the preferred alternative. Therefore, party/charter revenue losses per boat could range anywhere from no revenue losses up to 0.20 percent, on average, of total expected boat revenue in 2000. Three other alternatives the Council analyzed produced reductions of 54, 46, and 49 percent in catch with revenue losses estimated between 0 and 6.85 percent.

For black sea bass, the preferred alternative for the 2000 fishing year maintains the minimum size limit at 10 inches (25.40 cm) TL. Thus, it can be assumed that there will be no additional recreational fishing trips

affected in 2000. As such, the size limit proposed under the preferred alternative will not likely alter party/charter boat revenue in 2000. The Council analyzed one alternative that would add a 20-fish possession limit to the management measures for the black sea bass recreational fishery. Of the estimated 1.468 million trips taken by anglers aboard party and charter boats in 1998 in the Northeast Region about 0.57 percent would have been affected by the implementation of the black sea bass measures proposed under non-preferred Alternative 1 for the 2000 fishing year (10-inch (25.40-cm) TL size limit, 20-fish possession limit). In other words, 8,366 (0.57 percent) angler trips taken aboard party/charter boats in 1998 landed at least one black sea bass that was less than 10 inches (25.40 cm), or landed more than 20 black sea bass. In 1998, a 10-inch (25.40-cm) minimum size limit was in place along with a closure from August 1, to August 15; there was no possession limit. Since no closure is proposed for black sea bass in 2000, a direct comparison of effort between 1998 and 2000 results in a small decrease in potentially affected trips. However, party/charter revenue losses per boat under this alternative could range anywhere 0 to 0.57 percent, on average, of total expected boat revenue in 2000.

Accordingly, a regulatory flexibility analysis was not prepared.

List of Subjects in 50 CFR Part 648

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: August 11, 2000.

William T. Hogarth,

*Deputy Assistant Administrator for Fisheries,
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 § 648.103, paragraph (b) is revised to read as follows:

§ 648.103 Minimum fish sizes.

* * * * *

(b) The minimum size for summer flounder is 15.5 inches (39.27 cm) TL for all vessels that do not qualify for a moratorium permit, and party boats holding a moratorium permit if fishing with passengers for hire or carrying more than five crew members, or charter boats holding a moratorium permit if fishing with more than three crew members.

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