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**FOR FURTHER INFORMATION CONTACT:**

Susan Gorsky, (202) 366-8553, Office of Hazardous Materials Standards, Research and Special Programs Administration.

**SUPPLEMENTARY INFORMATION:**

**I. Background**

On May 2, 2002, the Research and Special Programs Administration (RSPA, we) published a notice of proposed rulemaking (NPRM) proposing regulations to enhance the security of hazardous materials shipments (67 FR 22028). The NPRM proposed to revise requirements in the Hazardous Materials Regulations (HMR; 49 CFR Parts 171-180) applicable to registration certificates, shipping documentation, and training. We also proposed to establish a new requirement for certain hazardous materials shippers and carriers to have plans in place to assure the security of shipments during transportation. We provided for a 30-day comment period, until June 3, 2002.

Since publication of the NPRM, we received 9 requests from representatives of the regulated industry requesting an extension of the 30-day comment period provided in the NPRM. Commenters suggest that the issues addressed in the NPRM require "significant" and "rigorous" analysis and substantial industry outreach to accurately assess the impact of the proposals on the industry. Commenters request a 60-day extension of the comment period to thoroughly review the proposals and provide constructive input to the rulemaking process.

As we stated in the NPRM, the threat to this Nation's security posed by possible intentional misuse of hazardous materials transported in commerce is ongoing and significant. Hazardous materials shippers and carriers must take action to enhance hazardous materials transportation security. However, we agree that commenters need more time than initially provided to consider the proposals in the NPRM. Therefore, we are extending the comment period for the NPRM an additional 30 days, until July 3, 2002.

In addition, two commenters discovered an incorrect reference in the NPRM. On page 22034, under the proposed regulatory text language for § 172.704(a)(4)(ii), the reference

"§ 173.14 of this subchapter" should read "§ 172.802".

Accordingly, we are correcting the HM-232 NPRM as follows:

**Correction**

**PART 172—[CORRECTED]**

**§ 172.704 [Corrected]**

In proposed rule FR Doc. 02-10405, beginning on page 22028 in the issue of May 2, 2002, make the following correction to the proposed regulatory text:

On page 22034, in the third line of the second paragraph of column 3, in § 172.704(a)(4)(ii), correct "§ 173.14 of this subchapter" to read "§ 172.802".

Issued in Washington, DC on May 20, 2002 under authority delegated in 49 CFR part 106.

**Robert A. McGuire,**

*Associate Administrator for Hazardous Materials Safety Research and Special Programs Administration.*

[FR Doc. 02-13003 Filed 5-22-02; 8:45 am]

**BILLING CODE 4910-60-P**

**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

**50 CFR Part 648**

**[Docket No. 010710173-2088-04; I.D. 032102A]**

**RIN 0648-AO91**

**Fisheries of the Northeastern United States; Recreational Measures for the Summer Flounder, Scup, and Black Sea Bass Fisheries Fishing Year 2002**

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

**ACTION:** Proposed rule; request for comments; proposed technical correction.

**SUMMARY:** NMFS proposes recreational measures for the 2002 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:** Public comments must be received on or before June 7, 2002.

**ADDRESSES:** Comments on the proposed recreational specifications should be

sent to Patricia A. Kurkul, Regional Administrator, Northeast Region, NMFS, One Blackburn Drive, Gloucester, MA 01930-2298.

Copies of supporting documents used by the Summer Flounder, Scup, and Black Sea Bass Monitoring Committees and of the Environmental Assessment, Regulatory Impact Review, 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 accessible via the Internet at <http://www.nero.nmfs.gov/ro/doc/nero.html>.

**FOR FURTHER INFORMATION CONTACT:**

Richard A. Pearson, Fishery Policy Analyst, (978) 281-9279, fax (978) 281-9135, e-mail [rick.a.pearson@noaa.gov](mailto:rick.a.pearson@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 Fishery Management Plan for the Summer Flounder, Scup, and Black Sea Bass Fisheries (FMP) and its implementing regulations (50 CFR part 648, subparts G, H, and I) describe the process for specifying annual recreational measures that apply in the Federal Exclusive Economic Zone (EEZ). The states manage these fisheries within three miles of their coast, under the Commission's Interstate FMP. The Federal regulations govern vessels fishing in the EEZ, which extends beyond three miles, as well as vessels possessing a Federal fisheries permit, regardless of where they fish. The FMP established Monitoring Committees (Committees) for each of the three fisheries, consisting 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 FMP and its implementing regulations require the Committees to review scientific and other relevant information annually and to recommend measures necessary to achieve the recreational harvest limits established for the summer flounder, scup, and black sea bass fisheries. The FMP limits these measures to minimum fish size, possession limit, 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 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 specifications for the 2002 summer flounder, scup and black sea bass fisheries were published at 66 FR 66348, December 26, 2001. These specifications include a coastwide recreational harvest limit of 9.72 million lb (4.40 million kg) for summer flounder, 2.71 million lb (1.23 million kg) for scup, and 3.43 million lb (1.55 million kg) for black sea bass. Those specifications do not establish recreational measures, since final recreational catch data were not available when the Council made its recreational harvest limit recommendation to NMFS.

### Summer Flounder

The 2002 final specifications established Total Allowable Landings (TAL) for summer flounder of 24.3 million lb (11.02 million kg), consistent with the FMP's target fishing mortality rate (F) of 0.26. The specifications divided the summer flounder TAL into a commercial quota of 14.58 million lb (6.61 million kg) and a recreational harvest limit of 9.72 million lb (4.40 million kg).

In 2000, recreational landings were 15.82 million lb (7.17 million kg), the highest landings since 1987. In 2001, the Council and the Board implemented a recreational harvest limit of 7.16 million lb (3.25 million kg), the lowest recreational limit since the FMP went into effect in 1992. To achieve the 2001 recreational harvest limit, most coastal states from Maine through North Carolina established measures in state waters that were significantly more restrictive than the 2000 recreational summer flounder measures. NMFS similarly implemented restrictive measures for the EEZ (66 FR 39288, July 30, 2001). Despite these measures, 2001 Marine Recreational Statistics Survey (MRFSS) data project recreational summer flounder landings to be 11.54 million lb (5.23 million kg). Thus,

assuming recreational fishing effort in 2002 will be similar to that in 2001, a 16 percent reduction in recreational landings is needed to achieve the recreational harvest limit of 9.72 million lb (4.40 million kg) established for 2002. However, in 2001, some states implemented higher minimum size limits and possession limits than the proposed limits in 2002. In addition, most states implemented differing seasons. Taking into consideration state-specific measures implemented in 2001, adjusted projected landings would be 13.22 million lb (5.99 million kg). As such, the overall percent reduction required to achieve the 2002 harvest limit of 9.72 million lb (4.41 million kg) would be 27 percent for 2002.

On July 11, 2001, NMFS published a final rule in the **Federal Register** to implement Framework Adjustment 2 to the FMP (66 FR 36208). This framework implemented a process that makes conservation equivalency a management option for the summer flounder recreational fishery. Conservation equivalency allows each state to establish its own recreational management measures (possession limit, minimum fish size, and season time and duration) as long as the combined effect of all of the states' management measures achieve the same level of conservation as Federal coastwide measures developed to achieve the recreational harvest limit would, if implemented by all of the states (i.e., both would have equivalent Fs).

If NMFS approves and implements conservation equivalency, then NMFS would waive Federal recreational measures that would otherwise apply in the EEZ. Federally permitted vessels as well as vessels fishing in the EEZ, would be subject to the recreational fishing measures implemented by the state in which the fish are landed. The Council and Board recommend annually either conservation equivalency (whereby states develop state-specific measures) or coastwide management measures (whereby all states adopt the same measures as the Federal measures) for the summer flounder recreational fishery to ensure that the recreational harvest limit will not be exceeded.

If the Council and the Board recommend conservation equivalency, they must also recommend coastwide management measures that would be implemented if, following NMFS review and public comment, conservation equivalency is not implemented in the final rule. In addition, the Council and the Board must recommend precautionary default measures that would apply in states that either do not

submit conservation equivalency proposals to the Board, or whose management proposals are not approved by the Board. The precautionary default measures are defined as the set of measures that would achieve the greatest reduction in landings required for any state.

For 2002, the Council and Board voted to recommend conservation equivalency to achieve the required 16-percent reduction in total landings for the recreational summer flounder fishery.

As required when conservation equivalency is recommended, the Council and Board also specify precautionary default measures. Precautionary default measures are defined as measures that would achieve at least the overall required reduction in landings for each state. The Precautionary Approach Alternative adopted by the Council and Board consists of an 18 inch (45.72 cm) total length (TL) minimum fish size, a possession limit of one fish per person, and no closed season. Because the precautionary default must be restrictive enough to achieve the necessary reductions in the state requiring the greatest reductions, in most states application of the precautionary default would achieve higher than necessary reductions. The precautionary default measures would reduce state specific landings by 41 (Delaware) to 88.2 percent (North Carolina). As specified in Framework 2 to the Summer Flounder, Scup and Black Sea Bass FMP, specific states that fail to implement conservation equivalent measures would be required to implement precautionary default measures.

Finally, the coastwide alternative recommended by the Council and Board to be implemented in the EEZ if conservation equivalency is not implemented, includes a possession limit of eight fish/person, a minimum fish size of 17 inches (43.18 cm) TL, and no closed season. The recommended coastwide alternative would reduce recreational landings by 30 percent, assuming the coastwide regulations are implemented by all states. For comparative purposes, the existing coastwide summer flounder measures include a 15.5-inch (39.37 cm) minimum fish size, a 3-fish possession limit and an open season from May 25 through September 4.

The Commission has established conservation equivalency guidelines that require each state, using state-specific tables, to determine and implement an appropriate possession limit, size limit, 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. As specified by the guidelines adopted by the Atlantic States Marine Fisheries Commission (ASMFC) and put forth in Addendum III to the Summer Flounder, Scup, and Black Sea Bass FMP, based upon the number of fish landed in 1998 (the control year) and projected to have been landed in 2001, the percent reduction in landings required by the states for 2002 (relative to 2001) are: Rhode Island: 5 percent; New Jersey: 16.7 percent; Delaware: 3.5 percent; Maryland: 5.3 percent; Virginia: 43.8 percent; and North Carolina: 28.4 percent. Massachusetts, Connecticut and New York do not require any reductions in recreational summer flounder landings if their current regulations are maintained.

1998 landings data were used to establish baseline state-by-state share ratios because this was the last year that all states had the same management regulations in place. Then, 2000 and 2001 landings data were used to set the landings reduction requirements for the 2002 recreational fishing year. Based on these data, it was concluded that 2001 landings were higher than the target for 2002, thus the 2002 quota is a reduction over 2001.

The Board required each state to submit its conservation equivalency proposal to the Commission by January 15, 2002. The Commission's Summer Flounder Technical Committee has since evaluated the proposals and advised the Board of each proposal's consistency with respect to achieving the coastwide recreational harvest limit. After the Technical Committee evaluation, the Board met on February 21, 2002 to approve or disapprove each state's proposal. The Commission invited public participation in its review process by holding public meetings and offering the public the opportunity to comment on the state proposals. During the comment period, the Commission will notify NMFS as to which state proposals have been approved or disapproved. Although the public is not formally advised of the Commission's recommendation regarding conservation equivalency during the comment period on this proposed rule, the information is available from the Commission or NMFS, after such notification.

If, at the final rule stage, the Commission recommends and NMFS accepts conservation equivalency, then NMFS would waive the Federal recreational measures that would otherwise apply in the EEZ. Federally

permitted vessels as well as vessels fishing in the EEZ, would be subject to the recreational fishing measures implemented by the state in which it lands. States that do not submit proposals or whose proposals were disapproved by the Commission would be required by the Commission to adopt the precautionary default measures. The Commission would allow states that had been assigned the precautionary default measures to resubmit revised management measures and ASMFC would notify NMFS of any resubmitted proposals that were approved after publication of the final rule implementing the recreational specifications. Afterwards, NMFS would publish a notice in the **Federal Register** to notify the public of any changes in the state's management measures.

NMFS is proposing to either approve and defer to the state conservation equivalency measures approved and recommended by the Commission or to implement the coastwide alternative in this proposed rule. If conservation equivalency is approved, the final rule would waive Federal recreational summer flounder measures (possession limit, size limit, and season) for federally permitted, charter/party permit holders and recreational vessels fishing for summer flounder in the Exclusive Economic Zone (EEZ). Those vessels would be required to abide by the requirements enacted by the state in which they land summer flounder.

### Scup

The 2002 specifications for scup implemented a recreational harvest limit of 2.71 mlb (1.23 million kg), consistent with the FMP target exploitation rate for scup, of 21 percent for the 2002 fishing year. The 2001 MRFSS data projected 2001 recreational scup landings to be 4.97 million lb (2.25 million kg). Assuming the same level of fishing effort will exist in 2002, the MRFSS data indicate that a reduction in landings will be necessary.

However, the landings data alone were not used to determine the necessary reductions for 2002. The effectiveness of the measures was also investigated and the Commission and Council found that they were not 100 percent effective due to discrepancies in landings data, which did not comply with the management measures set by the regulations. For example, some fish were landed over or under the bag limit and possession limit. These data were removed from the analyses and the data were re-analyzed to obtain more accurate estimates of landings that fall within the required measures. Likewise,

any discrepancies that occurred as a result of landings obtained outside the closed season of the previous year were removed. As a result, the projected 2001 recreational landings increased to 6.37 million lb (2.89 million kg) and the estimated reduction in landings necessary for 2002 increased to 57.4 percent.

The Council voted to recommend the following measures: A 10-inch (25.40-cm) TL minimum fish size, a 50-fish per person possession limit, and open seasons from January 1 through February 28 and from July 1 through October 31. For comparative purposes, the current scup recreational measures in the EEZ are a 9-inch (22.86 cm) minimum fish size, a 50-fish possession limit and an open season from August 15 through October 31. It was estimated that the Council's recommended scup measures would reduce recreational landings by only 30 percent, although a 57.4-percent reduction is necessary. The Council believes, however, that their recommended measures would have more impact than the analysis of the MRFSS data indicates, based on industry comment at the December 2001 Council meeting.

The Commission postponed action on scup at its December meeting and advised its staff to prepare an addendum to its Interstate FMP for Scup that would include state-by-state conservation equivalency and other measures. On February 21, 2002, the Commission approved Addendum VII to the Commission's Interstate Scup FMP, which allows states from Massachusetts through New York to develop state-specific management measures. For New Jersey, which has limited recreational scup landings data, the Commission approved a 10-inch (25.40-cm) TL minimum size, a 50-fish possession limit, and an open season from July 1 through October 31.

Due to low scup landings in more southern states, the Commission approved the retention of existing recreational scup measures in Delaware, Maryland, Virginia, and North Carolina. Because the Federal FMP does not contain provisions for conservation equivalency, and states may adopt their own unique measures under Addendum VII to the Commission's Interstate FMP, it is likely that state and Federal recreational scup measures will differ for the 2002 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 (i.e Council's

Preferred Scup Alternative) because the analysis indicates that accepting this recommendation would result in landings of approximately 4.46 million lb (2.02 million kg), which is well above the scup recreational harvest limit of 2.71 million lb (1.23 million kg) established for 2002. Thus, the Council's recommended measures are not consistent with the requirements of the FMP.

The Council submission also analyzed the following three alternatives that could reduce recreational landings by the required 57.4 percent: (1) A 10-inch (25.4-cm) TL minimum fish size, a 20-fish per person possession limit, and open seasons from January 1 through February 28 and from July 1 through October 2; (2) a 9-inch (22.86-cm) TL minimum fish size, a 20-fish per person possession limit, and open seasons from January 1 through February 28 and from October 8 through October 31. NMFS is hereby requesting public comment on the first two of these alternatives (defined later in this document and referred to as NMFS Scup Alternatives 1 and 2) for possible implementation in the final rule. These two alternatives have been determined by the Council to achieve the landings reductions needed to achieve the FMP's target exploitation rate. The third alternative (Scup Alternative 3), which would allow only a 24-day open season during the prime fishing period, is not being further considered for implementation by NMFS. The impacts associated with NMFS Scup Alternatives 1 and 2 are described in the Council's submission and are summarized in the Classification section of this proposed rule.

NMFS is proposing NMFS Scup Alternative 2 for publication in the proposed regulatory text. However, depending upon public comment, NMFS may instead implement Scup Alternative 1. Should Scup Alternative 1 ultimately be chosen, NMFS will publish the corresponding regulations in the final rule.

### Black Sea Bass

The 2002 specifications implemented a black sea bass recreational harvest limit of 3.43 mlb (1.56 million kg), consistent with the FMP's target exploitation rate of 37 percent established for the 2002 fishing year. The 2001 MRFSS data projected recreational scup landings during 2001 to be 3.64 million lb (1.65 million kg). As in the case of scup, landings data

were adjusted using the method devised by the Council's and Commission's Technical Committee to reflect the effectiveness of the various measures in 2001. Using this method, the projected 2001 recreational black sea bass landings increased to 3.88 million lb (1.76 million kg). Therefore, a 12-percent reduction in landings is estimated to be necessary for 2002.

The Council recommended the following black sea bass measures for the 2002 fishery: An 11.5-inch (29.21-cm) TL minimum fish size, a 25-fish per person possession limit, and no closed season. For comparative purposes, the current black sea bass regulations include an 11-inch (27.94 cm) minimum fish size, a 25-fish possession limit, and a March 1 through May 9 closed season. The Commission's Black Sea Bass Board adopted the same measures for 2002 as the Council at its December 2001 meeting. These measures should reduce recreational landings by 16 percent, if they are in compliance with the 85 percent criteria as adopted by the Black Sea Bass Monitoring Committee. NMFS has reviewed the Council's analyses of these measures and is publishing its preferred alternative in this proposed rule without modification.

### Correction

This proposed rule contains a proposed technical correction. In a recent final rule (67 FR 6877, February 14, 2002), the existing introductory text to § 648.100 was inadvertently removed. This proposed rule contains the introductory text that was inadvertently removed.

### Classification

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

The Council and NMFS prepared an IRFA that describes the economic impact this proposed rule would have on small entities, if adopted. A copy of the complete IRFA can be obtained from the Council (see **ADDRESSES**) or via the Internet at <http://www.nero.nmfs.gov>. A summary of the analysis follows.

This preamble includes a description of the proposed action, why it is being considered, and the legal basis for this proposed action. This proposed rule does not duplicate, overlap, or conflict with other Federal rules. There are no new reporting or recordkeeping requirements contained in the Preferred Alternative or any of the alternatives considered for this action. 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.

The Council's IRFA examined the economic impacts of alternative sets of recreational management measures for the summer flounder, scup and black sea bass fisheries. The economic impacts are fully described in the EA/RIR/IRFA. The proposed action could affect any recreational angler who fishes for summer flounder, scup or black sea bass. However, this summary of 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 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 in state waters. Although other recreational fishers are likely to be impacted, they are not considered small entities nor is there a permit requirement to participate in these fisheries.

In the IRFA, NMFS estimated that the proposed measures could affect any of the 738 vessels possessing a Federal charter/party permit for summer flounder, scup and/or black sea bass in 2000, the most recent year for which complete permit data are available. Only 393 of these vessels reported actively participating in the recreational summer flounder, scup, and/or black sea bass fisheries in 2000.

The 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 Regulatory Flexibility Act guidance recommends assessing changes in profitability as a result of proposed measures, the quantitative impacts were instead assessed using changes in party/charter vessel revenues as a proxy. This is because reliable cost data is not available for these fisheries. 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. The analysis estimated changes in revenues for party/charter vessels participating in the summer flounder, scup and/or black sea bass fisheries by employing the following method. First, 2001 MRFSS data were used to project the number of recreational party/charter vessel trips made in each state. The MRFSS data indicate that an estimated 1.778 million total trips were taken by anglers aboard

party/charter vessels in 2001 in the Northeast Region. Anglers fishing in New Jersey, North Carolina, Massachusetts, New York, and Virginia made 75 percent of those trips. The number of trips in each state ranged from a high of 621,700 in New Jersey to a low of 18,000 trips in Rhode Island.

Second, the number of trips that targeted summer flounder, scup and/or black sea bass was identified as appropriate for each measure. Then, the number of trips that would be impacted by the proposed measures was estimated. This information was presented as an absolute number and as a percentage of the total trips taken in each state.

Finally, the revenue impacts were estimated by calculating the average fee paid by anglers on party/charter vessels in the Northeast Region in 2001. That value of \$39.84 was used to calculate the statewide party/charter vessel revenue losses associated with the impacted trips (by multiplying the number of impacted trips in each state by \$39.84). Then, the revenue impacts on individual vessels were estimated by dividing the statewide revenue impact by the number of vessels affected in each state. This method presumes that the number of party/charter vessels participating in each fishery in 2002 will be the same as in 2000. Also, the analysis assumes that angler effort and catch rates in 2002 will be similar to 2001.

The analysis noted that this method is likely to result in an over-estimation of the revenue losses because the analysis assumes that all trips that are affected by the measures would not be taken in 2002. However, it is very likely that some anglers would continue to take party/charter vessel trips even if the restrictions limit their landings. Also, some may engage in catch and release fishing and others may target other species of fish. It was not possible to estimate the sensitivity of anglers to specific management measures. In addition, revenue impacts may be overestimated because the states may implement different measures in state waters.

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

The proposed action for the summer flounder recreational fishery would limit coastwide catch to 9.72 million lb (4.40 million kg) and reduce landings by at least 27 percent compared to 2001 by either deferring management to the states or imposing coastwide Federal measures throughout the EEZ. The precautionary default provision that is included in the conservation

equivalency proposal was not analyzed as a separate provision because it was assumed that, if conservation equivalency is approved in the final rule, the states would use this opportunity to tailor less restrictive measures specifically to their state fisheries.

Precautionary default measures are defined as measures that would achieve at least the overall required reduction in landings for each state. The Precautionary Approach Alternative adopted by the Council and Board consists of an 18 inch (45.72 cm) total length minimum fish size, a possession limit of one fish per person, and no closed season. The precautionary default measures would reduce state specific landings by 41 (Delaware) to 88.2 percent (North Carolina). As specified by Framework 2 to the Summer Flounder, Scup and Black Sea Bass FMP, specific states that fail to implement conservation equivalent measures would be required to implement precautionary default measures.

The state-specific landings reductions associated with the precautionary default measures are substantially higher than the reductions that would be implemented using conservation equivalency. As such, it is expected that states will avoid the impacts of precautionary approach measures by establishing conservation equivalent management measures.

There is very little information available to empirically estimate how sensitive the affected party/charter boat anglers might be to the proposed fishing regulations. It is possible that the proposed management measures could restrict the recreational fishery for 2001 and cause a decrease in recreational satisfaction (i.e. low bag limit, larger fish size or closed season). It is also possible that, given the popularity of summer flounder among some anglers, the more restrictive time frame of the seasonal closures could affect angler satisfaction and/or demand for party/charter trips. Due to lack of data on angler satisfaction, these effects cannot be quantified. However, it is probable that the negative impacts to party/charter boat anglers under the precautionary default alternative would be substantially higher than those under the preferred alternative (conservation equivalency).

Comparatively, the impact of the proposed summer flounder conservation equivalency recommendation among states is likely to be similar to the level of landings reductions that are required of each state. Based upon the number of fish landed in 1998 and projected to

have been landed in 2001, the percent reduction in landings required by the states for 2002 (relative to 2001) are: Rhode Island: 5 percent; New Jersey: 16.7 percent; Delaware: 3.5 percent; Maryland: 5.3 percent; Virginia: 43.8 percent; and North Carolina: 28.4 percent. Massachusetts, Connecticut and New York do not require any reductions in recreational summer flounder landings if their current regulations are maintained. 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 economic impacts, to the extent practicable, yet achieves the biological objectives of the FMP.

The impacts of the non-preferred summer flounder coastwide alternative, which proposes a 17-inch (43.2 cm) TL minimum fish size and a possession limit of eight fish/person, were assessed using the quantitative method described above. Impacted trips were defined as trips taken aboard party/charter vessels in 2001 that landed at least one summer flounder that was smaller than 17 inches (43.2 cm) TL or that landed more than eight summer flounder. NMFS concluded through the analysis that the measures would affect less than 1 percent of party/charter trips in any of the states, with impacts identified only in New Jersey (\$64,381), Virginia (\$20,199), Delaware (\$7,530), Rhode Island (\$1,872), and Maryland (\$558). The statewide revenue losses associated with these impacts are shown in parentheses.

The average maximum gross revenue loss per party/charter vessel was estimated to be \$1,506 in Delaware, \$961 in New Jersey, \$808 in Virginia, \$186 in Maryland, and \$67 in Rhode Island. For the reasons noted above (alternative species, catch and release fishing, etc), it is very likely that some anglers would continue to take party/charter vessel trips even if the restrictions limit their landings. Therefore, this method is likely to overestimate the potential revenue impacts of the proposed measures. In addition, only 12 percent of recreational summer flounder landings were derived from the EEZ in 2000. Federal coastwide measures would apply to federally permitted vessels wherever they fish. However, the states could potentially implement different recreational measures for summer flounder.

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

The proposed action for scup is to impose Federal management measures in the EEZ that, in combination with management measures in place in state

waters, would achieve the coastwide harvest limit of 2.71 million lb (1.23 million kg). The proposed action would achieve this goal by implementing one of two alternative management regimes (i.e., NMFS Scup Alternative 1 and NMFS Scup Alternative 2).

The impacts of the Council's disapproved Preferred Scup alternative were assessed using the quantitative method described above. Impacted trips were defined as trips taken aboard party/charter vessels in 2001 that landed at least one scup smaller than 10 inches (25.4 cm) TL, that landed more than 50 scup, or that landed at least one scup during the proposed closed seasons of March 1 to June 30 and November 1 to December 31. The analysis concluded that the measures would affect 2.1 percent or less of the party/charter trips in any of the states, with impacts identified in Massachusetts (\$110,197), Delaware (\$15,976), New Jersey (\$6,574), Rhode Island (\$2,590), Connecticut (\$1,195) and New York (\$478). The statewide revenue losses associated with these impacts are shown in parentheses.

The average maximum gross revenue loss per party/charter vessel associated with the Council's Preferred Scup Alternative was estimated to be \$7,988 in Delaware, \$1,900 in Massachusetts, \$219 in New Jersey, \$185 in Rhode Island, \$149 in Connecticut, and \$17 in New York. This 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. In addition, although the Federal coastwide measures would apply to federally permitted vessels wherever they fish, state-only permitted vessels will likely be fishing under different recreational measures for scup, because the Commission has adopted a conservation equivalency addendum.

The impacts associated with NMFS Scup Alternative 1 are as follows: Impacted trips were defined as trips taken aboard party/charter vessels in 2001 that landed at least one scup smaller than 10 inches (25.4 cm) TL, that landed more than 20 scup, or that landed at least one scup during the proposed closed seasons of March 1 to June 30 and October 3 to December 31. The analysis concluded that the measures in Alternative 1 would affect 4 percent or less of the party/charter trips in any of the states, with impacts identified in New York (\$375,890), Massachusetts (\$180,635), Rhode Island (\$29,163), New Jersey (\$26,972), Connecticut (\$20,199), and Delaware (\$16,534). The statewide revenue losses

associated with these impacts are shown in parentheses.

The average maximum gross revenue loss per party/charter vessel associated with NMFS Scup Alternative 1 was estimated to be \$13,425 in New York, \$8,267 in Delaware, \$3,114 in Massachusetts, \$2,525 in Connecticut, \$2,083 in Rhode Island, and \$899 in New Jersey. This method of 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. Although the Federal coastwide measures would apply to federally permitted vessels wherever they fish, state-only permitted vessels will likely be fishing under different recreational measures for scup because the Commission has adopted a scup conservation equivalency addendum.

For NMFS Scup Alternative 2, impacted trips were defined as trips taken aboard party/charter vessels in 2001 that landed at least one scup smaller than 9 inches (22.86 cm) TL, that landed more than 20 scup, or that landed at least one scup during the proposed closed seasons of March 1 to September 1 and November 1 to December 31. The analysis concluded that the measures in Alternative 2 would affect 7.3 percent or less of the party/charter trips in any of the states, with impacts identified in New York (\$434,256), Massachusetts (\$388,838), New Jersey (\$314,856), Rhode Island (\$50,278), Delaware (\$23,466), and Connecticut (\$22,032). The statewide revenue losses associated with these impacts are shown here in parentheses.

The average maximum gross revenue loss per party/charter vessel associated with NMFS Scup Alternative 2 was estimated to be \$15,509 in New York, \$11,733 in Delaware, \$10,495 in New Jersey, \$6,704 in Massachusetts, \$3,591 in Rhode Island, and \$2,754 in Connecticut. These estimates are likely to be high because some anglers would likely continue to take party/charter vessel trips even if the restrictions limit their landings. Also, state-only permitted vessel will potentially be fishing under different recreational measures for scup due to the adoption of conservation equivalency by Commission.

For non-preferred Scup Alternative 3, impacted trips were defined as trips taken aboard party/charter vessels in 2001 that landed at least one scup smaller than 9 inches (22.86 cm) TL, that landed more than 50 scup, or that landed at least one scup during the proposed closed seasons of March 1 to October 7 and November 1 to December

31. The analysis concluded that the measures in Alternative 3 would affect 9.6 percent or less of the party/charter trips in any of the states, with impacts identified in New York (\$538,318), Massachusetts (\$481,506), New Jersey (\$325,453), Rhode Island (\$69,043), Connecticut (\$48,804), and Delaware (\$41,195).

The average maximum gross revenue loss per party/charter vessel associated with Scup Alternative 3 was estimated to be \$20,597 in Delaware, \$19,226 in New York, \$10,848 in New Jersey, \$8,302 in Massachusetts, \$6,101 in Connecticut, and \$4,932 in Rhode Island. These estimates are likely to be high because some anglers would likely continue to take party/charter vessel trips even if the restrictions limit their landings. Also, state-only permitted vessels will potentially be fishing under different recreational measures for scup due to the adoption of conservation equivalency by the Commission.

#### Impacts of Black Sea Bass Alternatives

The proposed black sea bass alternative is designed to achieve the 3.43 million lb (1.55 million kg) harvest limit and to reduce landings by at least 16 percent, compared to 2001. Although only a 12-percent reduction in landings (relative to 2001) is required, it was not possible to develop precise measures using only a minimum fish size and a possession limit. Impacted trips were defined as trips taken aboard party/charter vessels in 2001 that landed at least one black sea bass smaller than 11.5 inches (29.21 cm) TL or that landed more than 25 black sea bass. NMFS concluded through the analysis that the proposed alternative would affect 1.8 percent or less of the party/charter trips in any of the states, with impacts identified in New Jersey (\$178,324), Maryland (\$78,365), Delaware (\$55,457), Virginia (\$39,999), North Carolina (\$13,785), and Rhode Island (\$1,355). The statewide revenue losses associated with these impacts are shown in parentheses.

The average maximum gross revenue loss per party/charter vessel associated with the proposed black sea bass alternative was estimated to be \$26,122 in Maryland, \$11,091 in Delaware, \$3,075 in New Jersey, \$1,818 in Virginia, \$1,378 in North Carolina, and \$54 in Rhode Island. As stated above, these estimates represent maximum potential losses because it is likely that anglers will continue to take party/charter trips rather than quit altogether, due to the new restrictions.

For black sea bass non-preferred Alternative 1, impacted trips were defined as trips taken aboard party/

charter vessels in 2001 that landed at least one black sea bass smaller than 11 inches (27.94 cm) TL, that landed more than 25 black sea bass, or that landed at least one black sea bass during the closed season (December 1 - May 18). The analysis concluded that the proposed alternative would affect 5.5 percent or less of the party/charter trips in any of the states, with impacts identified in New Jersey (\$238,920), Maryland (\$81,792), Delaware (\$64,342), Virginia (\$44,501), Rhode Island (\$39,442), North Carolina (\$15,418), and Massachusetts (\$3,426). The statewide revenue losses associated with these impacts are shown in parentheses.

The average maximum gross revenue loss per party/charter vessel associated with black sea bass non-preferred Alternative 1, was estimated to be \$27,264 in Maryland, \$12,868 in Delaware, \$4,119 in New Jersey, \$2,023 in Virginia, \$1,578 in Rhode Island, \$1,542 in North Carolina, and \$36 in Massachusetts.

For black sea bass non-preferred Alternative 2, impacted trips were defined as trips taken aboard party/charter vessels in 2001 that landed at least one black sea bass smaller than 11 inches (27.94 cm) TL, that landed more than 15 black sea bass, or that landed at least one black sea bass during the closed seasons (March 1–April 31 and December 27–December 31). NMFS concluded through the analysis that the proposed alternative would affect 5.5 percent or less of the party/charter trips in any of the states, with impacts identified in New Jersey (\$1,360,775), Maryland (\$110,317), Delaware (\$52,908), Virginia (\$41,115), North Carolina (\$13,785), Rhode Island (\$4,582), New York (\$3,307), and Massachusetts (\$518). The statewide revenue losses associated with these impacts are shown in parentheses.

The average maximum gross revenue loss per party/charter vessel associated with non-preferred Alternative 2 was estimated to be \$36,772 in Maryland, \$23,462 in New Jersey, \$10,582 in Delaware, \$1,869 in Virginia, \$1,378 in North Carolina, \$183 in Rhode Island, \$59 in New York, and \$5 in Massachusetts.

Potential revenue losses in 2002 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. In Rhode Island, for example, losses could reach \$6,481 for each vessel that lands all three species in 2002, compared to 2001. However, in Maryland, a vessel that lands all three species could potentially lose up to a

maximum of \$32,151 in 2002. On average, the largest potential losses were projected for party/charter vessels operating out of New York, New Jersey, Delaware, and Maryland in 2002.

It is important to re-emphasize that the revenue losses discussed above represent the maximum potential gross revenue losses per vessel. These losses were calculated by assuming that all of the angler trips constrained by the proposed measures would no longer occur. Because anglers would continue to have the ability to engage in catch-and-release fishing for summer flounder, scup, and black sea bass and because of the numerous alternative target species available to anglers, the reduction in effort and associated expenditures should be substantially lower than indicated in this summary. The lack of demand models limits the ability to empirically estimate how sensitive the affected anglers might be to the proposed regulations. Because the proposed measures affect the number and size of the fish that may be kept and do not prohibit anglers from engaging in catch and release fishing or fishing up to the possession limit, demand and revenues for party/charter vessels are expected to remain relatively stable.

The RIR/IRFA is available from the Council (see ADDRESSES).

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

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: May 16, 2002.

**Rebecca Lent,**

*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 § 648.100(d), as a proposed correction, introductory text is added to read as follows:

#### § 648.100 Catch quotas and other restrictions.

\* \* \* \* \*

(d) *Commercial measures.* \* \* \*

3. Section 648.102 is revised to read as follows:

#### § 648.102 Time restrictions.

Unless otherwise specified pursuant to § 648.107, vessels that are not eligible for a moratorium permit under § 648.4(a)(3) and fishermen subject to

the possession limit may fish for summer flounder from January 1 through December 31. This time period may be adjusted pursuant to the procedures in § 648.100.

4. In § 648.103, paragraph (b) is revised to read as follows:

#### § 648.103 Minimum fish sizes.

\* \* \* \* \*

(b) Unless otherwise specified pursuant to § 648.107, the minimum size for summer flounder is 17 inches (43.18 cm) TL for all vessels that do not qualify for a moratorium permit, and charter boats holding a moratorium permit if fishing with more than three crew members, or party boats holding a moratorium permit if fishing with passengers for hire or carrying more than five crew members.

\* \* \* \* \*

5. In § 648.105, the first sentence of paragraph (a) is revised to read as follows:

#### § 648.105 Possession restrictions.

(a) Unless otherwise specified pursuant to § 648.107, no person shall possess more than eight 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. \*\*\*

\* \* \* \* \*

6. § 648.107 is revised to read as follows:

#### § 648.107 Conservation equivalent measures for the summer flounder fishery.

For 2002, the Regional Administrator has determined that conservation equivalent measures shall be implemented by the states for the recreational summer flounder fishery. Therefore:

(a) Federally permitted vessels subject to the recreational fishing measures of this part, and other recreational fishing vessels harvesting summer flounder in or from the EEZ and subject to the recreational fishing measures of this part, landing summer flounder in a state whose fishery management measures are determined by the Regional Administrator to be the conservation equivalent of the season, minimum size and possession limit prescribed in §§ 648.102, 648.103(b) and 648.105(a), respectively, based on a recommendation from the Summer Flounder Board of the Atlantic States Marine Fisheries Commission shall not be subject to the more restrictive Federal measures pursuant to the provisions of § 648.4(b). Those vessels shall be subject



to the recreational fishing measures implemented by the state in which they land.

(b) Federally permitted vessels subject to the recreational fishing measures of this part, and other recreational fishing vessels registered in states and subject to the recreational fishing measures of this part, whose fishery management measures are not determined by the Regional Administrator to be the conservation equivalent of the season, minimum size and possession limit prescribed in §§ 648.102, 648.103(b) and 648.105(a), respectively, due to the lack of 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—January 1 through December 31; minimum size—18 inches (45.72 cm); and possession limit—one fish.

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

**§ 648.122 Time 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 February 28 and from September 2 through October 31. This time period may be adjusted pursuant to the procedures in § 648.120.

8. In § 648.124, paragraph (b) is revised to read as follows:

**§ 648.124 Minimum fish sizes.**

\* \* \* \* \*

(b) The minimum size for scup is 9 inches (22.86 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.

\* \* \* \* \*

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

**§ 648.125 Possession limit.**

(a) No person shall possess more than 20 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.\*\*\*

\* \* \* \* \*

10. 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 not possess black sea bass, except from January 1 through December 31. This time period may be adjusted pursuant to the procedures in § 648.140.

11. In § 648.143, paragraph (b) is revised to read as follows:

**§ 648.143 Minimum sizes.**

\* \* \* \* \*

(b) The minimum size for black sea bass is 11.5 inches (29.21 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. The minimum size may be adjusted for recreational vessels pursuant to the procedures in § 648.140.

\* \* \* \* \*

[FR Doc. 02-12779 Filed 5-22-02; 8:45 am]

BILLING CODE 3510-22-S