

and also should measure the transmission of exterior noise to the interior while the bus is not running. The exterior noise should be measured as the bus is operated past a stationary measurement instrument.

8. Emissions

The emissions test should measure tailpipe emissions of those exhaust constituents regulated by the United States Environmental Protection Agency (EPA) for transit bus emissions, plus carbon dioxide (CO₂) and methane (CH₄), as the bus is operated over specified driving cycles. The emissions test should be conducted using an emissions testing laboratory equipped with a chassis dynamometer capable of both absorbing and applying power.

The emissions test is not a certification test, and is designed only to enable FTA recipients to compare the relative emissions of buses operating on the same set of typical transit driving cycles. The results of this test are not directly comparable to emissions measurements obtained by other agencies, such as the EPA, which are used for other purposes.

Peter M. Rogoff,
Administrator.

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 0909101271-91272-01]

RIN 0648-AY23

Fisheries of the Northeastern United States; Black Sea Bass Recreational Fishery; Emergency Rule

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

ACTION: Emergency rule; emergency action; request for comments.

SUMMARY: NMFS is implementing, through this emergency rule, a closure of the recreational black sea bass fishery in the Federal waters of the Exclusive Economic Zone (EEZ) from 3 to 200 nautical miles offshore, north of Cape Hatteras, NC. This action is necessary because the best available information for black sea bass recreational landings indicates that the 2009 recreational harvest limit established for the black sea bass fishery is projected to have been exceeded. NMFS is effecting this closure to mitigate the magnitude of the recreational overage because the established mortality objective for 2009 has been exceeded.

DATES: Effective October 5, 2009.

ADDRESSES: You may submit comments, identified by RIN 0648-AY23, by any one of the following methods:

- **Electronic submissions:** Submit all electronic public comments via the Federal eRulemaking Portal <http://www.regulations.gov>.

- **Mail and hand delivery:** Patricia A. Kurkul, Regional Administrator, NMFS, Northeast Regional Office, 55 Great Republic Drive, Gloucester, MA 01930. Mark the outside of the envelope: "Comments on 2009 Black Sea Bass Recreational EEZ Closure."

- **Fax:** (978) 281-9135. Send the fax to the attention of the Sustainable Fisheries Division. Include "Comments on 2009 Black Sea Bass Recreational EEZ Closure" prominently on the fax.

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

NMFS will accept anonymous comments. Attachments to electronic comments will be accepted in Microsoft Word, Excel, WordPerfect, or Adobe PDF file formats only.

FOR FURTHER INFORMATION CONTACT: Michael Ruccio, Fishery Policy Analyst, (978) 281-9104.

SUPPLEMENTARY INFORMATION: A final rule to establish the recreational harvest limits for 2009 for the summer flounder, scup, and black sea bass fisheries was published in the *Federal Register* on January 2, 2009 (74 FR 29). The black sea bass recreational harvest limit for 2009 is 1.14 million lb (517 mt). The 2009 recreational management measures for Federal waters are a 12.5-inch (31.75-cm) minimum size, a 25-fish possession limit, and an open season of January 1 through December 31. Marine Recreational Fisheries Statistics Survey (MRFSS) data through Wave 3 (January-June) indicate that 1,018,878 lb (462 mt) have been landed. Due to time constraints, this amount has not been stratified to exclude southern stock landings that occur south of Cape Hatteras, NC. The total North Carolina landings through Wave 3 are 71,059 lb (32 mt). Therefore, the landings through Wave 3 are at least 947,819 lb (430 mt). This means that between 83 and 89 percent of the 2009 recreational harvest limit had been taken by the end of June. Data for Wave 4 (July-August) are not yet available; however, an average of 27

percent of the annual landings has occurred during Wave 4 in the years 2005-2008. On average, an additional 24 percent of landings have occurred during Wave 5 (September-October) and 4 percent during Wave 6 (November-December) for the same time period. Using these proportions of landings by wave (*i.e.*, Waves 1-3 = 45 percent of annual landings) and applying the information to the actual landings data available through Wave 3 for 2009 would result in approximately 611,000 lb (277 mt) being landed through the end of August (end of Wave 4), with an additional 634,000 lb (288 mt) expected to be landed before the end of the year if the fishery remains open.

Using MRFSS data in a variety of projection scenarios, NMFS, along with independent MRFSS queries made by staff of the Atlantic States Marine Fisheries Commission (Commission) and Mid-Atlantic Fishery Management Council (Council) have concluded that the 2009 recreational harvest limit for black sea bass has been exceeded. Multiple projections utilizing the actual 2009 MRFSS data through Wave 3 and projected landings for the remaining Waves 4-6 have indicated that the potential range of total 2009 landings is from 2.1 to 3.7 million lb (953 to 1,678 mt). This would exceed the 2009 recreational harvest limit by 84 to 225 percent, respectively, if landings are left unchecked until the regulatory closure date of December 31, 2009.

Regardless of the variability in the projection methods utilized, wherein average fish weight and multiple ranges of prior years are included to inform average landings in Waves 4-6 were modified in the different treatments, a substantial portion of the black sea bass recreational fishery clearly occurs during the months of July-October (MRFSS Waves 4 and 5). On average, Waves 4-6 have produced 55 percent of the total coastwide black sea bass landings in the years 2005-2008. Wave 4 MRFSS information for 2009 will not be available until mid-October. However, the best information currently available indicates that the 2009 recreational harvest level has been exceeded and that continued operation of the fishery will result in additional landings above the established harvest level. Even after a closure of the EEZ occurs, additional landings above the established recreational harvest level will occur in state waters, unless all states implement closures of their state-water recreational black sea bass fisheries.

The Commission's Black Sea Bass Management Board (Board) convened on September 8, 2009, to discuss

potential emergency closure of the 2009 recreational fishery, but ultimately voted not to implement an emergency closure at this time. From 2004–2008, approximately 62 percent of black sea bass landings were from the EEZ. The amount of black sea bass harvest in the EEZ varies by state: No black sea bass were landed in the EEZ adjacent to CT, and roughly 10 percent of the MA black sea bass fishery occurred in the adjacent EEZ during the 2004–2008 time frame; conversely, NJ, DE, and MD all had greater than 92 percent of their respective black sea bass landings taken from the EEZ. Had the Board taken action to close state waters, the EEZ would have effectively been closed, as individuals would have been prohibited from transiting state waters in possession of recreationally caught black sea bass from the EEZ.

NMFS is taking temporary emergency action to close the 2009 black sea bass recreational fishery in the EEZ for the remainder of the fishing year for the following reasons: (1) The best available information indicates that the 2009 recreational harvest limit established for the fishery has been greatly exceeded; and (2) the projected overage has already exceeded the recreational fishery mortality objective established for 2009 and the magnitude of the projected overage threatens to exceed the overall mortality objective established at the total landings level (*i.e.*, commercial and recreational sectors combined).

Classification

The Administrator, Northeast Region, NMFS, determined that this temporary rule is consistent with the national standards and other provisions of the Magnuson-Stevens Fishery Conservation and Management Act and other applicable laws. The rule may be extended for a period of not more than 186 days as described under section 305(c)(3)(B) of the Magnuson-Stevens Fishery Conservation Management Act.

The Assistant Administrator for Fisheries, NOAA, finds good cause pursuant to 5 U.S.C. 553(b)(B) to waive prior notice and the opportunity for public comment because it would be impracticable and contrary to the public interest.

This emergency closure action is being implemented to mitigate the

amount of additional landings that will occur above the established 2009 recreational harvest limit. As such, time is of the essence in implementing the closure. NMFS has demonstrated, using recent fishery landings information, that an average of 28 percent of black sea bass landings has occurred in Waves 5 and 6 (September–December) in the last 4 years. By implementing this closure as soon as possible, the amount of the recreational harvest limit overage may be minimized. The FMP contains no pound-for-pound recreational overage repayment mechanism; however, in years following an overage, a greater reduction in the following year's fishery is often required unless the overage is offset by an increase in the recreational harvest limit. *Status quo* landing limits have been proposed by the Council for the 2010 black sea bass fishery. NMFS will review the Council's recommendation for consistency with applicable regulations and statutes before implementing a final landings level, including a recreational harvest limit, at the end of 2009. If NMFS implements the Council's recommended TAL of 2.3 million lb (1,043 mt) for 2010, the magnitude of the projected 2010 overage is such that no recreational fishery may be permitted in the Federal waters of the EEZ for 2010. Hence, promulgation of this closure is time sensitive. It would be contrary to the public interest to delay as such delay would invariably allow additional landings above the recreational harvest limit and require greater 2010 landings reductions and/or ensure that no recreational fishery would occur in 2010.

This emergency action responds to analysis of the most recent MRFSS data through Wave 3. This information was first available in mid-August. Time was needed to conduct analyses for potential landings for the remainder of 2009, as well as to prepare the rulemaking documents. NMFS has developed and implemented this emergency action as expeditiously as possible.

Waiver of the notice-and-comment rulemaking period will serve the public by allowing for a closure which mitigates the amount of landings that occur above the established recreational harvest limit.

For the same reasons, the Assistant Administrator for Fisheries, NOAA,

finds good cause pursuant to 5 U.S.C. 553(d)(3) to make this rule effective immediately, thereby waiving the 30-day delayed effective date required by 5 U.S.C. 553(d).

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

This rule is exempt from the procedures of the Regulatory Flexibility Act because the rule is not subject to the requirement to provide prior notice and opportunity for public comment pursuant to 5 U.S.C. 553 or any other law.

List of Subjects in 50 CFR Part 648

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: September 29, 2009.

John Oliver,

Deputy Assistant Administrator for Operations, National Marine Fisheries Service.

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

PART 648—FISHERIES OF THE NORTHEASTERN UNITED STATES

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

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

■ 2. Section 648.142 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 after October 5, 2009, unless this time period is adjusted pursuant to the procedures in § 648.140.

■ 3. In § 648.145, the first sentence of paragraph (a) is revised to read as follows:

§ 648.145 Possession limit.

(a) No person shall possess black sea bass after October 5, 2009, in, or harvested from the EEZ, unless that person is the owner or operator of a fishing vessel issued a black sea bass moratorium permit, or is issued a black sea bass dealer permit. * * *

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