

(2) The operator of any vessel in the immediate vicinity of the regulated area shall:

(i) Stop the vessel immediately when directed to do so by any Official Patrol and then proceed only as directed.

(ii) All persons and vessels shall comply with the instructions of the Official Patrol.

(3) Any spectator vessel may anchor outside of the regulated area specified in paragraph (a) of this section but may not block a navigable channel.

(d) *Enforcement period.* (1) This section will be enforced from 8:30 a.m. to 7:30 p.m. on July 14, 15, 16, 17, and 18, 2008 and if the event's daily activities should conclude prior to 6 p.m., enforcement of this proposed regulation may be terminated for that day at the discretion of the Patrol Commander.

(2) The Coast Guard will publish a notice in the Fifth Coast Guard District Local Notice to Mariners and issue marine information broadcast on VHF-FM marine band radio announcing specific event dates and times.

Dated: March 10, 2008.

**Fred M. Rosa, Jr.,**

*Rear Admiral, U.S. Coast Guard, Commander, Fifth Coast Guard District.*

[FR Doc. E8-5776 Filed 3-20-08; 8:45 am]

BILLING CODE 4910-15-P

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[EPA-R05-OAR-2006-0879; FRL-8533-9]

### Approval and Promulgation of Air Quality Implementation Plans; Ohio

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** EPA is proposing to approve revisions to the Ohio State Implementation Plan (SIP). On September 7, 2006, Ohio requested approval of revisions to its open burning standards. The revisions were made to clarify the open burning rules. Ohio added requirements for specific types of burning that were previously not addressed. The state also added or refined some of the definitions and slightly changed some of the existing rules. The revisions were made to increase clarity of Ohio's open burning rules.

**DATES:** Comments must be received on or before April 21, 2008.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA-R05-

OAR-2006-0879, by one of the following methods:

1. *http://www.regulations.gov*: Follow the online instructions for submitting comments.

2. *E-mail*: [mooney.john@epa.gov](mailto:mooney.john@epa.gov).

3. *Fax*: (312) 886-5824.

4. *Mail*: John M. Mooney, Chief, Criteria Pollutant Section, Air Programs Branch (AR-18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604.

5. *Hand Delivery*: John M. Mooney, Chief, Criteria Pollutant Section, Air Programs Branch (AR-18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604. Such deliveries are only accepted during the Regional Office normal hours of operation, and special arrangements should be made for deliveries of boxed information. The Regional Office official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m. excluding Federal holidays.

Please see the direct final rule which is located in the Rules section of this **Federal Register** for detailed instructions on how to submit comments.

**FOR FURTHER INFORMATION CONTACT:** Matt Rau, Environmental Engineer, Criteria Pollutant Section, Air Programs Branch (AR-18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886-6524, [rau.matthew@epa.gov](mailto:rau.matthew@epa.gov).

**SUPPLEMENTARY INFORMATION:** In the Final Rules section of this **Federal Register**, EPA is approving the State's SIP submittal as a direct final rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this rule, no further activity is contemplated. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time. Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment. For additional information, see the direct final rule which is located

in the Rules section of this **Federal Register**.

Dated: February 15, 2008.

**Bharat Mathur,**

*Acting Regional Administrator, Region 5.*

[FR Doc. E8-5668 Filed 3-20-08; 8:45 am]

BILLING CODE 6560-50-P

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 648

[Docket No. 070717341-8250-01]

RIN 0648-AV41

### Fisheries of the Northeastern United States; Recreational Management Measures for the Summer Flounder, Scup, and Black Sea Bass Fisheries; Fishing Year 2008

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

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

**SUMMARY:** NMFS proposes management measures for the 2008 summer flounder, scup, and black sea bass recreational fisheries. The implementing regulations for these fisheries require NMFS to publish recreational measures for the fishing year and to provide an opportunity for public comment. The intent of these measures is to prevent overfishing of the summer flounder, scup, and black sea bass resources.

**DATES:** Comments must be received by 5 p.m. local time, on April 21, 2008.

**ADDRESSES:** You may submit comments, identified by RIN 0648-AV41, 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, One Blackburn Drive, Gloucester, MA 01930. Mark the outside of the envelope: "Comments on 2008 Summer Flounder, Scup, and Black Sea Bass Recreational Measures."

- Fax: (978) 281-9135. Send the fax to the attention of the Sustainable Fisheries Division. Include "Comments on 2008 Summer Flounder, Scup, and Black Sea Bass Recreational Measures" 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.

Copies of the specifications document, including the Environmental Assessment, Regulatory Impact Review, and Initial Regulatory Flexibility Analysis (EA/RIR/IRFA) and other supporting documents for the specifications are available from Daniel Furlong, Executive Director, Mid-Atlantic Fishery Management Council, Room 2115, Federal Building, 300 South Street, Dover, DE 19901-6790. These documents are also accessible via the Internet at <http://www.nero.noaa.gov>.

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

#### **SUPPLEMENTARY INFORMATION:**

##### **Background**

The summer flounder, scup, and black sea bass fisheries are managed cooperatively under the provisions of the Summer Flounder, Scup, and Black Sea Bass Fishery Management Plan (FMP) developed by the Mid-Atlantic Fishery Management Council (Council) and the Atlantic States Marine Fisheries Commission (Commission), in consultation with the New England and South Atlantic Fishery Management Councils. The management units specified in the FMP include summer flounder (*Paralichthys dentatus*) in U.S. waters of the Atlantic Ocean from the southern border of North Carolina (NC) northward to the U.S./Canada border, and scup (*Stenotomus chrysops*) and black sea bass (*Centropristis striata*) in U.S. waters of the Atlantic Ocean from 35°13.3' N. lat. (the latitude of Cape Hatteras Lighthouse, Buxton, NC) northward to the U.S./Canada border.

The Council prepared the FMP under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), 16 U.S.C. 1801 *et seq.* Regulations implementing the FMP appear at 50 CFR part 648, subparts A (general provisions), G (summer flounder), H (scup), and I (black sea bass). General regulations governing U.S. fisheries also appear at 50 CFR part 600. States manage summer flounder within 3 nautical 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 exclusive economic zone (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.

Quota specifications for the 2008 summer flounder, scup, and black sea bass fisheries were published on December 31, 2007 (72 FR 74197). Based on these specifications, the 2008 coastwide recreational harvest limits are 6,215,800 lb (2,819 mt) for summer flounder, 1,830,920 lb (830 mt) for scup, and 2,108,447 lb (956 mt) for black sea bass. The specification rules did not establish recreational measures, since final recreational catch data for 2007 were not available when the Council made its recreational harvest limit recommendation to NMFS.

All minimum fish sizes discussed hereafter are total length measurements of the fish, i.e., the straight-line distance from the tip of the snout to the end of the tail while the fish is lying on its side. For black sea bass, total length measurement does not include the caudal fin tendril. All possession limits discussed below are per person.

##### **Summer Flounder**

Recreational landings for 2007 were estimated to have been 9.30 million lb (4,218 mt). This exceeded, by approximately 38 percent, the 2007 recreational harvest limit of 6.69 million lb (3,034 mt). All states except MA and VA are projected to have exceeded their state harvest limits established under the conservation equivalency system utilized to manage the 2007 recreational summer flounder fishery. The magnitude of the overages ranged from a low of 16 percent for CT to a high of 49 percent for MD.

The 2008 coastwide harvest limit is 6,215,800 lb (2,819 mt), a 9.2-percent decrease from the 2007 harvest limit of 6,689,004 lb (3,034 mt). Given the 2007 overages and reduction in available harvest for 2008, landings must be reduced by 33.2-percent coastwide from the 2007 levels to ensure that the 2008 harvest limit is not exceeded. The Council is recommending conservation equivalency, described as follows, that would require individual states to reduce summer flounder landings (measured in number of fish) to achieve the necessary recreational harvest reductions for 2008.

NMFS implemented Framework Adjustment 2 to the FMP (Framework Adjustment 2) 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) to achieve its state harvest limit, as long as the combined effect of all of the states' management measures achieves the same level of conservation as would Federal coastwide measures developed to achieve the overall recreational harvest limit, if implemented by all of the states.

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. In such a situation, federally permitted charter/party permit holders and recreational vessels fishing for summer flounder in the EEZ would then be subject to the recreational fishing measures implemented by the state in which they land summer flounder, rather than the coastwide measures.

In addition, the Council and the Board must recommend precautionary default measures. 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 (Technical Committee), or that submits measures that are determined not to achieve the required level of reduction for that state. The precautionary default measures are defined as the set of measures that would achieve at least the highest percent reduction for any state on a coastwide basis.

In December 2007, the Council and Board voted to recommend conservation equivalency to achieve the 2008 recreational harvest limit. The Commission's conservation equivalency guidelines require the states to determine and implement appropriate state-specific management measures (i.e., possession limits, fish size limits, and fishing seasons) to achieve state-specific harvest limits. States may also form voluntary regions wherein the member states' measures must achieve the overall reduction required for the region in question.

For 2008, at the request of NMFS, and under the direction of the Council and Commission, the Technical Committee developed additional guidance for states to utilize to improve the effectiveness of conservation equivalency in 2008. The Technical Committee assessed the performance, as measured by the effectiveness of state measures in constraining landings to the annual recreational harvest limits, for each state's conservation equivalency measures during the period of 2001 through 2007. Based on the average individual state overage during the 2001–2007 time frame, the Technical Committee crafted a performance-based adjustment to be applied to further increase the percent reduction some states must achieve in 2008. States assigned this additional reduction had an average net overage relative to their respective harvest targets for the 2001–2007 time frame.

Under the conservation equivalent approach, each state may implement unique management measures appropriate to that state, so long as these measures are determined by the Commission to provide equivalent conservation as would Federal coastwide measures. For 2008, the Commission is requiring that states also reduce landings by an additional performance-based adjustment, as developed by the Technical Committee, to achieve the overall recreational harvest limit in an effort to ensure that recreational overages will not occur in 2008. According to the conservation equivalency procedures established in Framework Adjustment 2, each state except MA would be required to reduce 2008 landings by the percentages shown in Table 1. In addition, the states of RI, CT, NY, NJ, and VA are required by the Commission to further reduce landings by the Technical Committee's performance-based adjustment factor shown in Table 1, resulting in a final higher total level of reduction for 2008. MA may submit more liberal management measures, provided that they are sufficient to ensure its 2008 state harvest limit is not exceeded. ME and NH have no recreational summer flounder harvest limit and are not required to submit management measures to the Commission.

TABLE 1. 2008 CONSERVATION EQUIVALENCY STATE-SPECIFIC HARVEST TARGETS (THOUSANDS OF FISH), INITIAL PERCENT REDUCTIONS, COMMISSION REQUIRED PERFORMANCE-BASED ADJUSTMENTS, AND FINAL PERCENT REDUCTIONS.

State	2008 Target (X '000 fish)	Initial Percent Reduction Required under Framework Adjustment 2 to the FMP	Commission Performance Based Reduction Factor	Final Percent Reduction Required by Commission
MA	113	0	0	0
RI	116	47.5	7.8	51.6
CT	77	28.7	1.9	30.1
NY	361	45.9	33.6	64.0
NJ	801	39.2	4.3	41.8
DE	64	41.8	0.0	41.8
MD	61	56.7	0.0	56.7
VA	342	13.9	8.9	21.5
NC	115	34.3	0.0	34.2

The Board required that each state submit its conservation equivalency proposals to the Commission by late

January 2008. The 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 invited public participation in its review process by allowing public comment on the state proposals at the Technical Committee meeting held on January 29, 2008. The Board met on February 7, 2008, and approved a range of management proposals for each state designed to attain conservation equivalency. Once the states select and submit their final summer flounder management measures to the Commission, the Commission will notify NMFS as to which individual state proposals have been approved or disapproved. NMFS retains the final authority either to approve or to disapprove using conservation equivalency in place of the coastwide measures and will publish its determination as a final rule in the **Federal Register** to establish the 2008 recreational measures for these fisheries.

States that do not submit conservation equivalency proposals, or whose proposals are disapproved by the Commission, will be required by the Commission to adopt the precautionary default measures. In the case of states that are initially assigned precautionary default measures, but subsequently receive Commission approval of revised state measures, NMFS will publish a notice in the **Federal Register** announcing a waiver of the permit condition at § 648.4(b). The suite of state proposals for 2008, consistent with the Technical Committee's performance-based adjustment procedures, have initially been approved by the Commission. Therefore, a state would only be required to implement precautionary default measures if the measures submitted for final Commission approval are different than those preliminarily approved by the Commission or for failing to finalize conservation equivalent measures for 2008.

The precautionary default measures initially recommended by the Council and Board during their joint December 2008 meeting were for a 20.0-inch (50.80-cm) minimum fish size, a possession limit of two fish, and an open season of May 23 through September 1, 2008. Since the December 2007, the Technical Committee developed the previously discussed performance-based adjustment in response to a joint Council and Commission motion designed to improve the performance of conservation equivalency. This resulted in the precautionary default measures

initially proposed by the Council and Commission to be less restrictive than measures that some states would be required to implement under the performance-based adjustment. To rectify this situation, the Board voted in February 2008 to implement a modified precautionary default consisting of a 20.0-inch (50.80-cm) minimum fish size, a possession limit of two fish, and an open season of July 4 through September 1, 2008, to ensure that the necessary level of reduction for all states would occur in the event that precautionary default measures are assigned to any state for 2008. NMFS finds this modification to the precautionary default measures (i.e., reduction in fishing season) to be consistent with Framework Adjustment 2 that established the precautionary default reduction requirements, and therefore proposes to implement the modified precautionary default measures adopted by the Board and Commission: A 20.0-inch (50.80-cm) minimum fish size, a two fish possession limit, and an open season of July 4 through September 1, 2008.

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 2008 are a 19-inch (48.26-cm) minimum fish size, a possession limit of three fish, and an open season from May 23 to September 1, 2008. Supplemental analysis conducted by NMFS using the upper bound of the 2007 Marine Recreational Fishery Statistics Survey (MRFSS) harvest estimates and factoring in potential diminished effectiveness of regulations based on noncompliance in 2007 demonstrates that these coastwide measures, as proposed by the Council and Board, may not effectively constrain landings to the 2008 recreational harvest limit if implemented instead of conservation equivalency. In this action, NMFS proposes to modify the Council and Board's recommended possession limit from a three fish to a two fish limit. The change in possession limit, while retaining the Council and Board recommended minimum fish size and fishing season, would be expected to constrain landings to the overall recreational harvest. These modified coastwide measures would be waived if conservation equivalency is approved in the final rule.

### Scup

The 2008 scup recreational harvest limit is lb 1,830,920 lb (830 mt), roughly a 33-percent decrease from the 2007 recreational harvest limit of 2.74 million

lb (1,240 mt). Fishing year 2008 is year 1 of the scup rebuilding plan implemented by Amendment 14 to the FMP (July 23, 2007; 72 FR 40077). The substantial reduction in the 2008 recreational harvest limit is largely a result of a necessary reduction in exploitation on the scup stock consistent with this recently enacted management plan designed to rebuild the scup resource from an overfished condition. Recreational landings in 2007 were estimated to have been 3.80 million lb (1,723 mt). A coastwide reduction in landings of 51.8 percent is required to achieve the 2008 recreational harvest limit for scup.

The 2008 scup recreational fishery will be managed under separate regulations for state and Federal waters; the Federal measures would apply to party/charter vessels with Federal permits and other vessels subject to the possession limit that fish in the EEZ. In Federal waters, to achieve the 2008 target, NMFS proposes coastwide management measures of a 10.5-inch (26.67-cm) minimum fish size, a 15-fish possession limit, and open seasons of January 1 through February 29, and October 1 through October 31, as recommended by the Council.

As has occurred in the past 6 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 for this region in number of fish (approximately 1.7 million fish for 2008), 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 2008.

At the February 7, 2008, meeting, the Board approved a regional management proposal for MA through NY that would allow different minimum fish sizes, possession limits, and fishing seasons for private vessels/shore based anglers and party/charter vessels. For this northern conservation equivalency area, the Board retained a minimum fish size of 10.5 inches (26.7 cm), a common possession limit (10 fish), and a May 24 through September 26 fishing season for private vessels and shore-based anglers;

party and charter vessels may take scup for up to 126 days under two distinct seasons with separate minimum fish sizes, possession limits and seasons. One charter/party season, designated as "bonus fishery" has a minimum fish size of 11.0 inches (27.94 cm), a 45-fish possession limit, and is constrained to a 45-day period within May 15 through October 15. The second party/charter season designation is the "non-bonus fishery" which carries an 11.0-inch (27.94 cm) minimum fish size, a 10-fish possession limit, and is 81 days in duration either prior to or following the dates of the open season. Due to low scup landings in NJ through NC, the Board approved the retention of status quo management measures for those states, i.e., a 10-inch (25.40-cm) minimum fish size, a 50-fish possession limit, and open seasons of January 1 through February 29 and September 18 through November 30.

### Black Sea Bass

Recreational landings in 2007 were estimated to have been 1.97 million lb (890 mt)—20 percent below the 2007 target of 2.47 million lb (1,120 mt) and 7 percent below the 2008 target of 2.11 million lb (957 mt). The 2008 recreational harvest limit of 2.11 million lb (957 mt) is a 14.6-percent decrease from the 2007 target. Based on 2007 landings, no reduction in landings is necessary to achieve the 2008 target.

For Federal waters, the Council and Board have approved measures that would maintain the 25-fish possession limit, the 12-inch (30.48-cm) minimum size, and open season of January 1 through December 31. NMFS proposes to maintain these measures, which are expected to constrain recreational black sea bass landings to the 2008 target.

### Classification

Pursuant to section 304 (b)(1)(A) of the Magnuson-Stevens Act, the NMFS Acting Assistant Administrator has determined that this proposed rule is consistent with the Summer Flounder, Scup, and Black Sea Bass FMP, other provisions of the Magnuson-Stevens Act, and other applicable law, subject to further consideration after public comment.

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

An IRFA was prepared, as required by section 603 of the RFA. The IRFA describes the economic impact this proposed rule, if adopted, would have on small entities. A description of the action, why it is being considered, and the legal basis for this action are contained at the beginning of this

section of the preamble and in the **SUMMARY** section of the preamble. A summary of the analysis follows. A copy of the complete IRFA is available from the Council (see **ADDRESSES**).

This proposed rule does not duplicate, overlap, or conflict with other Federal rules. 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 RFA, i.e., businesses in the recreational fishery with gross revenues of up to \$6.5 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 919 vessels possessing a Federal charter/party permit for summer flounder, scup, and/or black sea bass in 2006, the most recent year for which complete permit data are available. However, only 369 of these vessels reported active participation in the recreational summer flounder, scup, and/or black sea bass fisheries in 2006.

In the 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 19-inch (48.26-cm) minimum fish size, a 2-fish possession limit, and a season from May 23 through September 1, i.e., the Federal regulatory measure that would be implemented if conservation equivalency is not implemented in the final rule; (2) for scup, a 10-inch (25.40-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 (3) for black sea bass, a 12-inch (30.48-cm) minimum size, a 25-fish possession limit, and an open season of January 1 through December 31.

The no-action alternative for black sea bass is the same (status quo) set of measures being proposed for 2008.

Landings of black sea bass in 2007 was less than the 2008 target and the status quo measures are expected to constrain landings to the 2008 target. As such, since there is no regulatory change being proposed for black sea bass, there is no further discussion of the economic impacts within this section.

The impacts of the proposed action on small entities (i.e., federally permitted party/charter vessels in each state in the Northeast region) was analyzed, assessing potential changes in gross revenues for all 18 combinations of alternatives proposed. Although NMFS's RFA guidance recommends assessing changes in profitability as a result of proposed measures, the quantitative impacts were instead evaluated using changes in party/charter vessel revenues as a proxy for profitability. This is because reliable cost and revenue information are not available for charter/party vessels at this time. Without reliable cost and revenue data, profits cannot be discriminated from gross revenues. As reliable cost data become available, impacts to profitability can be more accurately forecast. Similarly, changes to long-term solvency were not assessed due both to the absence of cost data and because the recreational management measures change annually according to the specification-setting process. Effects of the various management measures were analyzed by employing quantitative approaches, to the extent possible. Where quantitative data were not available, the qualitative analyses were utilized.

Management measures proposed under the summer flounder conservation equivalency alternative (Summer Flounder Alternative 1) have yet to be adopted; therefore, potential losses under this alternative could not be analyzed in conjunction with various 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 for other combinations of alternatives were examined by first estimating the number of angler trips aboard party/charter vessels in each state in 2007 that would have been affected by the proposed 2008 management measures. All 2007 party/charter fishing trips that would have

been constrained by the proposed 2008 measures in each state were considered to be affected trips. MRFSS data indicate that anglers took 38.70 million fishing trips in 2007 in the Northeastern U.S., and that party/charter anglers accounted for 4.7 percent of the angler fishing trips, private/rental boat trips accounted for 52.5 percent of angler fishing trips, and shore trips accounted for 42.8 percent of recreational angler fishing trips. The number of party/charter trips in each state ranged from 23,542 in DE to 508,259 in NJ.

There is very little empirical evidence available to estimate how the party/charter vessel anglers might be affected by the proposed fishing regulations. 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 northeast (ME through NC) in 2008.

Total economic losses to party/charter vessels were then estimated by multiplying the number of potentially affected trips in each state in 2008, under the two hypothetical scenarios, by the estimated average access fee of \$41.32<sup>1</sup> paid by party/charter anglers in the northeast in 2007. Finally, total economic losses were divided by the number of federally permitted party/charter vessels that participated in the summer flounder fisheries in 2006 in each state (according to homeport state in the Northeast Region Permit Database) to obtain an estimate of the average projected gross revenue loss per party/charter vessel in 2008. The analysis assumed that angler effort and catch rates in 2008 will be similar to 2007.

The Council noted that this method is likely to overestimate the potential revenue losses that would result from implementation of the proposed coastwide measures in these three fisheries for several reasons. First, the

<sup>1</sup> 1998 party/charter average expenditure estimate adjusted to 2007 equivalent using Bureau of Labor's Consumer Price Index.

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 (e.g., more than 91 percent of summer flounder and 94 percent of scup landings in 2006, respectively), it is probable that some party/charter vessels fish only in state waters and, thus, do not hold Federal permits for these fisheries. Third, economic losses are estimated under two hypothetical scenarios: (1) A 25 percent and (2) a 50 percent reduction in the number of fishing trips that are predicted to be affected by implementation of the management measures in the Northeast in 2008. Reductions in fishing effort of this magnitude in 2008 are not likely to occur given the fact that the proposed measures do not prohibit anglers from keeping at least some of the fish they catch or the fact that there are alternative species to harvest. Again, it is likely that at least some of the potentially affected anglers would not reduce their effort when faced with the proposed landings restrictions, thereby contributing to the potential overestimation of potential impacts for 2008.

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

The proposed action for the summer flounder recreational fishery would limit coastwide catch to 6.21 million lb (2,817 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, each state except MA would be required to reduce summer flounder landings in 2008, relative to state 2007 landings, by the percentages shown in Table 1 of the preamble of this proposed rule. 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 expected that the states would adopt conservation equivalent measures that result in fewer adverse economic impacts than the more restrictive Commission adopted, NMFS proposed precautionary default measures (i.e., 20.0-inch (50.80-cm) minimum fish size, a possession limit of two fish, and an open season of July 4 through September 1). Under the precautionary default measures, impacted trips are defined as trips taken in 2007 that landed at least two summer flounder smaller than 20.0 inches (50.80 cm) or landed summer flounder during closed seasons. The analysis concluded that implementation of precautionary default measures could affect 4.28 percent of the party/charter vessel trips in the Northeast, including those trips where no summer flounder were caught.

The impacts of the NMFS proposed summer flounder coastwide alternative, i.e., a 19-inch (48.26-cm) minimum fish size, a two-fish possession limit, and a fishing season from May 23 through September 1, were evaluated using the quantitative method described above. Impacted trips were defined as individual angler trips taken aboard party/charter vessels in 2007 that landed at least one summer flounder smaller than 19 inches (48.26 cm), that landed more than 2 summer flounder, or landed summer flounder during closed seasons. The analysis concluded that the measures would affect 1.34 percent of the party/charter vessel trips in the Northeast, including those trips where no summer flounder were caught.

Continuation of the current regulatory summer flounder coastwide management measures (i.e., an 18.5-inch (46.99-cm) minimum fish size, 4-fish possession limit, and year-round season) is not expected to constrain 2008 landings to the recreational harvest

limit; therefore, continuation of those measures would be inconsistent with the summer flounder rebuilding program, the FMP, and the Magnuson-Stevens Act.

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

The proposed action for the scup recreational fishery would limit coastwide catch to 1.83 million lb (830 mt) by imposing coastwide Federal measures throughout the EEZ. As described earlier in the preamble, a conservation equivalent program is utilized by the Commission to manage state waters. 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 NMFS; charter/party vessels participating solely in state waters would be subject to the provisions adopted by the Commission; vessels participating in both state and Federal waters would be subject to the most restrictive of the two measures implemented to manage the 2008 scup recreational fishery.

The impact of the Council and Commission preferred scup alternative (Scup Alternative 1; a 10.5-inch (26.67-cm) minimum fish size, a 15-fish per person possession limit, and open seasons of January 1 through February 29 and October 1 through October 31) would reduce scup landings in 2008 by 53.2 percent from 2007 levels. Impacted trips were defined as trips taken in 2007 that landed at least one scup smaller than 10.5 inches (26.67 cm), landed more than 15 scup during the closed seasons (March 1 through September 30 and November 1 through December 31). Analysis concluded that 3.95 percent of Federally permitted party/charter vessel trips could be impacted by this alternative.

The impacts of the non-preferred scup coastwide alternative (Scup Alternative 2; 10.5-inch (26.67-cm) minimum fish size, 15-fish per person possession limit, and open seasons of January 1 through February 29 and October 1 through October 15) would reduce landings in 2008 by 60.5 percent from 2007 levels. Impacted trips were defined as trips taken in 2007 that landed at least one scup smaller than the minimum fish size, more than the possession limit, or during the closed season. The analysis concluded that this alternative could impact 4.13 percent of Federally permitted party/charter vessel trips in 2008, if implemented.

Scup Alternative 3 (status quo) measures are not expected to constrain landings to the 2008 recreational harvest limit and are therefore, inconsistent

with the current scup rebuilding plan, the FMP, and the goals and objectives of the Magnuson-Stevens Act.

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

Since the state-specific 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 boat trips in the northeast that are estimated to be affected by the proposed actions ranges from a low of 4.59 percent for the combination of measures proposed under summer flounder alternative 2, scup alternative 3, and black sea bass alternative 2 (Table 45 Initial Specifications) to 8.90 percent for the measures proposed under the NMFS summer flounder precautionary default combined with scup alternative 2 and black sea bass alternative 3.

Regionally, Federally permitted party/charter revenue losses in 2008 range from \$2.90 million to \$5.14 million in sales, \$1.06 million to \$1.88 million in income, and between 28 and 50 jobs if a 25-percent reduction in the number of affected trips occurs. The estimated losses are approximately twice as high if a 50-percent reduction in affected trips is assumed to occur.

Potential revenue losses in 2008 could differ for Federally permitted 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 for summer flounder, scup, and black sea bass are predicted to affect party/charter vessel revenues to some extent in all of the northeastern coastal states. Although potential losses were estimated for party/charter vessels operating out of Maine and New Hampshire, these results are suppressed for confidentiality purposes. Average party/charter losses for federally permitted vessels operating in the remaining states are estimated to vary across the 18 combinations of alternatives. For example, in North Carolina, average losses are predicted to range from a high of \$14,330 per vessel under the combined effects of summer flounder precautionary default measures (considered under alternative 1), Scup Alternatives 1 or 2, and Black Sea Bass Alternatives 1 or 3 management measures, to a low of \$7,734 per vessel under the combined effects of Summer Flounder Alternative 2, Scup

Alternative 3, and Black Sea Bass Alternative 2 management measures, assuming a 25-percent reduction in effort, as described above. Average gross revenue losses per vessel under each of the 36 combinations of alternatives were generally highest in North Carolina followed by Massachusetts, New York, New Jersey, Rhode Island, Virginia, Connecticut, Maryland and then Delaware.

#### **Summary**

The recreational harvest limits for summer flounder, scup, and black sea bass are 7.2-, 33.6-, and 14.6-percent lower than the adjusted recreational harvest limits for year 2007. In addition, the 2007 summer flounder recreational fishery exceeded the recreational harvest limit by 37.8 percent. As a result, the proposed recreational management measures for summer flounder are likely to be more restrictive for 2008 (i.e., either larger minimum fish size, lower possession limits, and/or shorter fishing seasons) under the proposed conservation equivalency system (Summer Flounder Alternative 1) than those in place in 2007 given the combined effects of a reduced TAL and exceeding the previous year recreational harvest limit. The proposed measures for scup are more restrictive than the measures in place for 2008. The proposed black sea bass measures are status quo, despite decreases to the overall 2008 black sea bass TAL. The proposed management measures, or management system in the case of conservation equivalency, were chosen because they allow for the maximum level of recreational landings, while allowing the NMFS to meet its legal requirements under the Magnuson-Stevens Act while achieving the objectives of the FMP. Summer flounder conservation equivalency permits states to implement management measures tailored, to some degree, to meet the needs of their individual recreational fishery participants, provided the level of reduction is equal to the overall reduction needed coastwide, consistent with Framework Adjustment 2 to the FMP. The scup management measures were selected as they are projected to permit the maximum amount of landings under the 2008 recreational harvest limit that complies with the fishing mortality objective outlined in the scup rebuilding plan of Amendment 14 to the FMP. As no reduction in landing levels from 2007 levels is required for black sea bass, the status quo measures are proposed for 2008.

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 17, 2008

**James W. Balsiger,**

*Acting 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 § 648.102, the first sentence 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 May 23 through September 1. \* \* \*

\* \* \* \* \*

3. 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 19-inch (48.26-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.

\* \* \* \* \*

4. 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 two 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. \* \* \*

\* \* \* \* \*

5. In § 648.107, paragraph (a) introductory text and paragraph (b) are revised to read as follows:



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

(a) The Regional Administrator has determined that the recreational fishing measures proposed to be implemented by Massachusetts through North Carolina for 2008 are the conservation equivalent of the season, minimum fish size, and possession limit prescribed in §§ 648.102, 648.103, and 648.105(a), respectively. This determination is based on a recommendation from the Summer Flounder Board of the Atlantic States Marine Fisheries Commission.

\* \* \* \* \*

(b) Federally permitted vessels subject to the recreational fishing measures of this part, and other recreational fishing vessels subject to the recreational fishing measures of this part and registered in states whose fishery management measures are not determined by the Regional Administrator to be the conservation equivalent of the season, minimum size, and possession limit prescribed in §§ 648.102, 648.103(b) and 648.105(a), respectively, due to the lack of, or the reversal of, a conservation equivalent recommendation from the Summer Flounder Board of the Atlantic States Marine Fisheries Commission, shall be subject to the following precautionary default measures: Season-July 4 through September 1; minimum size-20.0 inches (50.80 cm); and possession limit-two fish.

6. 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 October 1 through October 31. This time period may be adjusted pursuant to the procedures in § 648.120.

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

**§ 648.124 Minimum fish sizes.**

\* \* \* \* \*

(b) The minimum size for scup is 10.5 inches (26.67 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.

\* \* \* \* \*

8. In § 648.125, the introductory text of paragraph (a) is revised to read as follows:

**§ 648.125 Possession limit.**

(a) No person shall possess more than 15 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. \* \* \*

\* \* \* \* \*

[FR Doc. E8-5785 Filed 3-20-08; 8:45 am]

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**DEPARTMENT OF COMMERCE****National Oceanic and Atmospheric Administration****50 CFR Part 680**

RIN 0648-AW45

**Fisheries of the Exclusive Economic Zone Off Alaska; Allocating Bering Sea and Aleutian Islands King and Tanner Crab Fishery Resources**

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

**ACTION:** Notice of availability of fishery management plan amendment; request for comments.

**SUMMARY:** Congress amended the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) to require the Secretary of Commerce (Secretary) to approve the Bering Sea/Aleutian Islands (BSAI) Crab Rationalization Program (Program). The Program allocates BSAI crab resources among harvesters, processors, and coastal communities. Amendment 26 would modify the Fishery Management Plan for Bering Sea/Aleutian Islands (BSAI) King and Tanner crabs (FMP) and the Program to Amendment 26 to the FMP would exempt quota share issued to crew members, and the annual harvest privileges derived from that quota share, from requirements for: delivery to specific processors; delivery within specific geographic regions; and participation in an arbitration system to resolve price disputes. This action is intended to promote the goals and objectives of the Magnuson-Stevens Act, the FMP, and other applicable laws.

**DATES:** Comments on the amendment must be received by May 20, 2008.

**ADDRESSES:** Send comments to Sue Salvesson, Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region, NMFS, Attn:

Ellen Sebastian. You may submit comments, identified by 0648-AW45, by any one of the following methods:

- Electronic Submissions: Submit all electronic public comments via the FederalRulemaking Portal website at <http://www.regulations.gov>.
- Mail: P. O. Box 21668, Juneau, AK 99802.
- Fax: (907) 586-7557.
- Hand delivery to the Federal Building: 709 West 9<sup>th</sup> Street, Room 420A, Juneau, AK.

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 (e.g., name, address) 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 portable document file (pdf) formats only.

Copies of Amendment 26, the Regulatory Impact Review (RIR)/Initial Regulatory Flexibility Analysis (IRFA) for this action, and the Environmental Impact Statement (EIS) prepared for the Crab Rationalization Program may be obtained from the NMFS Alaska Region at the address above or from the Alaska Region website at <http://www.fakr.noaa.gov/sustainablefisheries.htm>.

**FOR FURTHER INFORMATION CONTACT:**

Glenn Merrill, 907-586-7228, [glenn.merrill@noaa.gov](mailto:glenn.merrill@noaa.gov).

**SUPPLEMENTARY INFORMATION:** The Magnuson-Stevens Act requires that each regional fishery management council submit any fishery management plan amendment it prepares to NMFS for review and approval, disapproval, or partial approval by the Secretary. The Magnuson-Stevens Act also requires that NMFS, upon receiving a fishery management plan amendment, immediately publish a notice in the **Federal Register** announcing that the amendment is available for public review and comment.

The king and Tanner crab fisheries in the exclusive economic zone of the BSAI are managed under the FMP. The FMP was prepared by the North Pacific Fishery Management Council (Council) under the Magnuson-Stevens Act as amended by the Consolidated Appropriations Act of 2004 (Pub. L. 108-199, section 801). Amendments 18 and 19 to the FMP amended the FMP to include the Program. Regulations