

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

[Docket No. 150211144–5144–01]

RIN 0648–BE89

**Fisheries of the Northeastern United States; Recreational Management Measures for the Summer Flounder, Scup, and Black Sea Bass Fisheries; Fishing Year 2015**

**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 2015 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 constrain recreational catch to established limits and prevent overfishing of the summer flounder, scup, and black sea bass resources.

**DATES:** Comments must be received by 5 p.m. local time, on May 20, 2015.

**ADDRESSES:** You may submit comments on this document, identified by NOAA–NMFS–2015–0051, by either of the following methods:

*Electronic Submission:* Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to [www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2015-0051](http://www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2015-0051). Click the “Comment Now!” icon, complete the required fields. Enter or attach your comments.

—OR—

*Mail:* Submit written comments to John Bullard, Regional Administrator, Greater Atlantic Region, 55 Great Republic Drive, Gloucester, MA 01930.

**Instructions**

Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered by NMFS. All comments received are a part of the public record and will generally be posted for public viewing on [www.regulations.gov](http://www.regulations.gov) without change. All personal identifying information (e.g., name, address, etc.), confidential business information, or otherwise sensitive information submitted

voluntarily by the sender will be publicly accessible. NMFS will accept anonymous comments (enter “N/A” in the required fields if you wish to remain anonymous).

Copies of the Supplemental Information Report (SIR) and other supporting documents for the recreational harvest measures are available from Dr. Christopher M. Moore, Executive Director, Mid-Atlantic Fishery Management Council, Suite 201, 800 N. State Street, Dover, DE 19901. The recreational harvest measures document is also accessible via the Internet at: <http://www.greateratlantic.fisheries.noaa.gov>.

**FOR FURTHER INFORMATION CONTACT:** Moira Kelly, Fishery Policy Analyst, (978) 281–9218.

**SUPPLEMENTARY INFORMATION:****General 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 and the Atlantic States Marine Fisheries 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 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 approximate latitude of Cape Hatteras, North Carolina). States manage these three species within 3 nautical miles (4.83 km) of their coasts, under the Commission's plan for summer flounder, scup, and black sea bass. The applicable species-specific Federal regulations govern vessels and individual fishermen fishing in Federal waters of the exclusive economic zone (EEZ), as well as vessels possessing a summer flounder, scup, or black sea bass Federal charter/party vessel permit, regardless of where they fish.

**Recreational Management Measures Background**

The Council process for devising recreational management measures to recommend to NMFS for rulemaking is generically described in the following section. All meetings are open to the public and the materials utilized during such meetings, as well as any documents created to summarize the

meeting results, are public information and posted on the Council's Web site ([www.mafmc.org](http://www.mafmc.org)) or are available from the Council by request. Therefore, extensive background on the 2015 recreational management measures recommendation process is not repeated in this preamble.

The FMP established monitoring committees for the three fisheries, consisting of representatives from the Commission, the Council, state marine fishery agency representatives from Massachusetts to North Carolina, and NMFS. The FMP's implementing regulations require the monitoring committees to review scientific and other relevant information annually. The objective of this review is to recommend management measures to the Council that will constrain landings within the recreational harvest limits established for the summer flounder, scup, and black sea bass fisheries for the upcoming fishing year. The FMP limits the choices for the types of measures to minimum fish size, per angler possession limit, and fishing season.

The Council's Demersal Species Committee and the Commission's Summer Flounder, Scup, and Black Sea Bass Management Board then consider the monitoring committees' recommendations and any public comment in making their recommendations to the Council and the Commission, respectively. The Council 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 and all applicable laws and Executive Orders before ultimately implementing measures for Federal waters.

In this rule, NMFS proposes management measures for the 2015 summer flounder, scup, and black sea bass recreational fisheries consistent with the recommendations of the Council. All minimum fish sizes discussed 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 per trip.

**Proposed 2015 Recreational Management Measures**

NMFS is proposing the following measures that would apply in the

Federal waters of the EEZ. These measures apply to all federally permitted party/charter vessels with applicable summer flounder, scup, or black sea bass permits, regardless of where they fish, unless the state in which they land implements measures that are more restrictive. These measures are intended to achieve, but not exceed, the previously established recreational harvest limits for these fisheries (December 30, 2014; 79 FR 78311). For summer flounder, we are proposing the use of state-by-state or regional conservation equivalency measures, which are the status quo measures; for scup, a 9-inch (25.4-cm) minimum fish size, a 50-fish per person possession limit, and an open season of January 1 through December 31; and, for black sea bass, a 12.5-inch (31.8-cm) minimum fish size, and a 15-fish per person possession limit for open seasons of May 15 through September 18 and October 22 through December 31. NMFS may implement more restrictive black sea bass measures, as recommended by the Council (*i.e.*, a 14-inch (35.6-cm) minimum fish size, a 3-fish per person possession limit, and an open season of July 15–September 15), for Federal waters if the Commission is unable to develop and implement state-waters measures that, when paired with the Council's recommended measures, provide the necessary conservation to ensure the 2015 recreational harvest limit will not be exceeded. More detail on these proposed measures is provided in the following sections.

#### *Summer Flounder Recreational Management Measures*

NMFS proposes to implement the Council and Commission's recommendation to use conservation equivalency to manage the 2015 summer flounder recreational fishery. The 2015 recreational harvest limit for summer flounder is 7.38 million lb (3,347 mt). Projected landings for 2014 are approximately 7.33 million lb (3,324 mt), just below the recreational harvest limit for 2015. As a result, the 2015 recreational landings should be maintained relative to 2014 to prevent the recreational harvest limit from being exceeded.

Conservation equivalency, as established by Framework Adjustment 2 (July 29, 2011; 66 FR 36208), allows each state to establish its own recreational management measures (possession limits, minimum fish size, and fishing seasons) to achieve its state harvest limit partitioned by the Commission from the coastwide recreational 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. Framework Adjustment 6 (July 26, 2006; 71 FR 42315) allowed states to form regions for conservation equivalency in order to minimize differences in regulations for anglers fishing in adjacent waters.

The Council and Board annually recommend that either state- or region-specific recreational measures be developed (conservation equivalency) or that coastwide management measures be implemented 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 for use in Federal waters.

When conservation equivalency is recommended, and following confirmation that the proposed state or regional measures developed through the Commission's technical and policy review processes achieve conservation equivalency, NMFS may waive the permit condition found at § 648.4(b), which requires Federal permit holders to comply with the more restrictive management measures when state and Federal measures differ. In such a situation, federally permitted summer flounder charter/party permit holders and individuals 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 when recommending conservation equivalency. The Commission would require adoption of the precautionary default measures by any state that either does not submit a summer flounder management proposal to the Commission's Summer Flounder Technical Committee, or that submits measures that would exceed the Commission-specified harvest limit for that state.

Much of the conservation equivalency measures development process happens at both the Commission and the individual state level. The selection of appropriate data and analytical techniques for technical review of potential state conservation equivalent measures and the process by which the Commission evaluates and recommends proposed conservation equivalent measures is wholly a function of the Commission and its individual member states. Individuals seeking information regarding the process to develop specific state measures or the

Commission process for technical evaluation of proposed measures should contact the marine fisheries agency in the state of interest, the Commission, or both.

The Commission has implemented an addendum to its Summer Flounder FMP (Addendum XXVI) to continue regional conservation equivalency for fishing year 2015. The Commission has adopted the following regions, identical to the regions used in 2014: (1) Massachusetts; (2) Rhode Island; (3) Connecticut, New York, and New Jersey; (4) Delaware, Maryland, and Virginia; and (5) North Carolina. Each state within a region is required by the Council and Commission FMPs to have identical measures. In order to provide the maximum amount of flexibility and to continue to adequately address the state-by-state differences in fish availability, each state in a region is required to establish fishing seasons of the same length, identical minimum fish sizes, and identical possession limits. The Commission will need to certify that these measures, in combination, are the conservation equivalent of coastwide measures that would be expected to result in the recreational harvest limit being achieved, but not exceeded. More information on this addendum is available from the Commission ([www.asmfc.org](http://www.asmfc.org)).

Once the states and regions select their final 2015 summer flounder management measures through their respective development, analytical, and review processes and submit them to the Commission, the Commission will conduct further review and evaluation of the submitted proposals, ultimately notifying NMFS as to which proposals have been approved or disapproved. NMFS has no overarching authority in the development of state or Commission management measures, but is an equal participant along with all the member states in the review process. NMFS retains the final authority either to approve or to disapprove the use of conservation equivalency in place of the coastwide measures in Federal waters, and will publish its determination as a final rule in the **Federal Register** to establish the 2015 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 2015 precautionary default measures recommended by the Council and Board are for a 20.0-inch (50.8-cm) minimum fish size, a possession limit of two fish, and an open season of May 1 through September 30, 2015.

In this action, NMFS proposes to implement conservation equivalency with a precautionary default backstop, as previously outlined, for states that either fail to submit conservation equivalent measures or whose measures are not approved by the Commission. NMFS proposes the alternative of coastwide measures (18-inch (45.7-cm) minimum size, 4-fish possession limit, May 1–September 30 open fishing season), if conservation equivalency is not approved in the final rule.

#### *Scup Recreational Management Measures*

NMFS is proposing to implement the Council and Commission's recommended scup recreational management measures for 2015 in Federal waters. The proposed measures for the 2015 scup recreational fishery are: 9-inch (22.9-cm) minimum fish size; 50-fish per person per trip possession limit; and an open season of January 1 through December 31.

The 2015 scup recreational harvest limit is 6.80 million lb (3,084 mt). Estimated 2014 scup recreational landings are 4.46 million lb (2,023 mt); therefore, no reduction in landings is needed. The increase in the possession limit from 30 to 50 fish is intended to promote an increase in recreational scup fishing in order to more fully achieve, but not exceed, the recreational harvest limit.

#### *Black Sea Bass Recreational Management Measures*

NMFS is proposing to implement the Council's recommended recreational management measures to constrain landings for black sea bass. The 2015 black sea bass recreational harvest limit is 2.33 million lb (1,056 mt). The 2014 projected landings are 3.45 million lb (1,115 mt). This requires a 33-percent reduction in 2015 landings relative to 2014.

Recreational black sea bass catch occurs primarily in state waters in the states of New Jersey through Massachusetts (*i.e.*, the northern region). Since 2011, the management measures in the northern region have been more restrictive than in Federal waters. The northern states, through the Commission process, are expected to implement measures to achieve a 33-percent reduction in landings from each

state. This reduction, in combination with the Council's recommendation of maintaining the status quo measures in Federal waters, are intended to achieve, but not exceed, the recreational harvest limit and recreational annual catch limit in 2015. The southern region states (Delaware through Cape Hatteras, North Carolina) are expected to implement state waters measures that are identical to the proposed Federal measures.

In 2012, recreational black sea bass catch exceeded the annual catch limit of 2.52 million lb (1,143 mt) by 129 percent. In 2013, recreational black sea bass catch exceeded the annual catch limit of 2.9 million lb (1,315 mt) by 5 percent. Because the average catch exceeds the average annual catch limit, as described in the regulations, an accountability measure is applicable to the 2015 fishery. An accountability measure was implemented for the 2014 fishing year because of the 2012 overage. The proposed 2015 measures are functionally the same as those implemented last year to comply with the accountability measure (12.5-inch (31.8-cm) minimum size, 15-fish possession limit, and 201-day fishing season). Continuing these regulations preserves the accountability measure that was applied last year; as such, no further accountability measures are necessary for 2015.

We are proposing the Council's recommended Federal waters measures, a 12.5-inch (31.8-cm) minimum size, 15-fish possession limit, and open seasons of May 15–September 21 and October 22–December 31. This proposal is contingent upon the northern region, established under the Commission's Addendum XXV, implementing the required 33-percent reduction in their state regulations. If the northern region's measures do not meet the required reduction, NMFS is proposing the Council's default recommendation of a 14-inch (35.6-cm) minimum size, a 3-fish possession limit, and an open season of July 15–September 15 (*i.e.*, a 63-day fishing season.)

#### **Additional Regulatory Change**

This rule would also clarify the regulations for summer flounder, scup, and black sea bass to indicate that the possession limits are per person, per trip. While it is clear in the FMP and subsequent amendments and framework adjustments that the possession limits are intended to apply for the entirety of a fishing trip, the regulations were less specific. This action would correct that oversight.

#### **Classification**

Pursuant to section 304(b)(1)(A) of the Magnuson-Stevens Act, the 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.

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

The Council conducted an evaluation of the potential socioeconomic impacts of the proposed measures in conjunction with a supplemental information report. These analyses identified 856 federally permitted charter/party vessels in the Greater Atlantic Region that could be affected by the proposed change. However, only 350 federally permitted charter/party vessels are expected to participate in these fisheries this year. There were 326 unique business entities associated with those 350 vessels, 299 are classified as for-hire businesses, 22 are finfish businesses, and 5 are shellfish businesses. One of the shellfish businesses potentially impacted by this rule is considered a "large" shellfish business; all of the other businesses are considered "small" by the respective Small Business Administration's size standards. The proposed measure would continue the use of conservation equivalency for summer flounder, moderately increase the possession limit for scup in Federal waters, and implement a minor adjustment to the black sea bass recreational fishing season in Federal waters to account for a previous rulemaking. The proposed action would result in essentially status quo measures for these fisheries in Federal waters. Analysis conducted by the Council indicates that these measures would have a minimal, potentially slightly positive, impact on regulated entities.

Because this rule will not have a significant economic impact on a substantial number of small entities, an initial regulatory flexibility analysis is not required and none has been prepared.

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: April 27, 2015.

**Samuel D. Rauch III,**

*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. Section 648.106, paragraphs (a) and (c) are revised to read as follows:

**§ 648.106 Summer flounder possession restrictions.**

(a) *Party/charter and recreational possession limits.* Unless otherwise specified pursuant to § 648.107, no person shall possess more than four summer flounder in, or harvested from, the EEZ, per trip 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. Persons aboard a commercial vessel that is not eligible for a summer flounder moratorium permit are subject to this possession limit. The owner, operator, and crew of a charter or party boat issued a summer flounder moratorium permit are subject to the possession limit when carrying passengers for hire or when carrying more than five crew members for a party boat, or more than three crew members for a charter boat. This possession limit may be adjusted pursuant to the procedures in § 648.102.

(c) Summer flounder harvested by vessels subject to the possession limit with more than one person on board may be pooled in one or more containers. Compliance with the possession limit will be determined by dividing the number of summer flounder on board by the number of persons on board, other than the captain and the crew. If there is a violation of the possession limit on board a vessel carrying more than one person, the violation shall be deemed to have been

committed by the owner and operator of the vessel.

\* \* \* \* \*

- 3. Section 648.107, paragraph (a) is 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 the states of Maine through North Carolina for 2015 are the conservation equivalent of the season, minimum 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.

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- 4. In § 648.128, paragraphs (a) and (c) are revised to read as follows:

**§ 648.128 Scup possession restrictions.**

(a) *Party/Charter and recreational possession limits.* No person shall possess more than 50 scup in, or harvested from, per trip 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. Persons aboard a commercial vessel that is not eligible for a scup moratorium permit are subject to this possession limit. The owner, operator, and crew of a charter or party boat issued a scup moratorium permit are subject to the possession limit when carrying passengers for hire or when carrying more than five crew members for a party boat, or more than three crew members for a charter boat. This possession limit may be adjusted pursuant to the procedures in § 648.122.

\* \* \* \* \*

(c) Scup harvested by vessels subject to the possession limit with more than one person aboard may be pooled in one or more containers. Compliance with the possession limit will be determined by dividing the number of scup on board by the number of persons aboard other than the captain and crew. If there is a violation of the possession limit on board a vessel carrying more than one person, the violation shall be deemed to have been committed by the owner and operator.

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- 5. Section 648.145, paragraphs (a) and (c) are revised to read as follows:

**§ 648.145 Black sea bass possession limit.**

(a) During the recreational fishing season specified at § 648.146, no person shall possess more than 15 black sea bass in, or harvested from, per trip 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. Persons aboard a commercial vessel that is not eligible for a black sea bass moratorium permit may not retain more than 15 black sea bass during the recreational fishing season specified at § 648.146. The owner, operator, and crew of a charter or party boat issued a black sea bass moratorium permit are subject to the possession limit when carrying passengers for hire or when carrying more than five crew members for a party boat, or more than three crew members for a charter boat. This possession limit may be adjusted pursuant to the procedures in § 648.142.

\* \* \* \* \*

(c) Black sea bass harvested by vessels subject to the possession limit with more than one person aboard may be pooled in one or more containers. Compliance with the possession limit will be determined by dividing the number of black sea bass on board by the number of persons aboard, other than the captain and the crew. If there is a violation of the possession limit on board a vessel carrying more than one person, the violation shall be deemed to have been committed by the owner and operator of the vessel.

\* \* \* \* \*

- 6. Section 648.146 is revised to read as follows:

**§ 648.146 Black sea bass recreational fishing season.**

Vessels that are not eligible for a moratorium permit under § 648.4(a)(7), and fishermen subject to the possession limit specified in § 648.145(a), may only possess black sea bass from May 15 through September 21, and October 22 through December 31, unless this time period is adjusted pursuant to the procedures in § 648.142.

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