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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 160301167-6167-01]

RIN 0648-BF89

Fisheries of the Northeastern United States; Recreational Management Measures for the Summer Flounder, Scup, and Black Sea Bass Fisheries; Fishing Year 2016

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 2016 summer flounder, scup, and black sea bass recreational fisheries. NMFS is also proposing a change to the commercial scup incidental possession limit, and two minor corrections to the summer flounder minimum mesh size regulations. 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. The intent of the commercial scup regulatory change is to reduce unnecessary discards by allowing more incidentally caught scup to be retained by vessels. The regulatory corrections are intended to clarify the original purpose of the regulation.

DATES: Comments must be received by 5 p.m. local time, on *[INSERT DATE 15 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]*.

ADDRESSES: You may submit comments on this document, identified by NOAA-NMFS-2016-0029, 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-2016-0029*,
- 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* 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: Elizabeth Scheimer, Fisheries Management Specialist, (978) 281-9236.

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 (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 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 recommending recreational management measures to NMFS for rulemaking is generically described below. 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) or are available from the Council by request. Therefore, extensive background on the 2016 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 three 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 (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. Commission measures are final at the time

they are adopted.

In this rule, NMFS proposes management measures for the 2016 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 tendrils. All possession limits discussed below are per person per trip.

Typically, the Council and Commission consider modifications to all of the Federal commercial management measures in conjunction with the specifications. In 2015, the Council and Commission postponed decision making on changes to the scup commercial measures until a more thorough analysis could be completed. After considering the full suite of commercial management measures in Federal waters, the Council recommends, and this rule proposes, changing the commercial scup incidental possession limit from 500 lb (227 kg) to 1,000 lb (454 kg) from November 1, 2016, through April 30, 2017. This incidental possession limit applies to vessels using mesh smaller than 5.0 inches (12.7 cm).

Proposed 2016 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 28, 2015; 80 FR 80689). For summer flounder, we are proposing the use of state-by-state or regional conservation equivalency measures, which are the status quo measures, and no changes to the scup or black sea bass recreational management measures. Although unlikely, given the Board's February 2016 decisions on black sea bass measures, NMFS may implement more restrictive black sea bass measures for Federal waters if states fail to implement measures that, when paired with the Council's recommended measures, provide the necessary conservation to ensure the 2016 recreational harvest limit will not be exceeded. These measures, as recommended by the Council, would be 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, 2016.

Summer Flounder Recreational Management Measures

NMFS proposes to implement the Council and Commission's recommendation to use conservation equivalency to manage the 2016 summer flounder recreational fishery. The 2016 recreational harvest limit for summer flounder is 5.42 million lb (2,457 mt) and projected landings for 2015 are approximately 4.62 million lb (2,096 mt). These 2015 projected landings are based on preliminary Marine Recreational Information Program estimates through Wave 6 (November and December 2015). As a result, maintaining the 2015 measures is expected to effectively constrain the 2016 recreational landings and prevent the recreational harvest limit from being exceeded.

Conservation equivalency, as established by Framework Adjustment 2 (July 29, 2001; 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 XXVII) to continue regional conservation equivalency for fishing year 2016. The Commission has adopted the following regions: (1) Massachusetts; (2) Rhode Island; (3) Connecticut and New York; (4) New Jersey; (4) Delaware, Maryland, and Virginia; and (5) North Carolina. 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 by the Council and Commission to establish fishing seasons of the same length, with identical minimum fish sizes and 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.asmf.org*).

Once the states and regions select their final 2016 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 2016 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 February 2016, the Commission's Summer Flounder Board convened and approved a suite of measures and/or analytical techniques for measures development that should achieve conservation equivalency. Thus, it is unlikely that the precautionary default measures will be necessary for 2016. However, if states are initially assigned precautionary default measures, they may subsequently receive Commission approval of revised state measures. In that case, NMFS would publish a notice in the **Federal Register** announcing a waiver of the permit condition at § 648.4(b).

The 2016 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, 2016.

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

The 2016 scup recreational harvest limit is 6.09 million lb (2,763 mt) and 2015 recreational landings are currently estimated at 4.88 million lb (2,214 mt). The Council recommended maintaining the existing management measures, as no changes are needed to ensure the 2016 recreational harvest limit is not exceeded, and further liberalization of the management measures is not requested or advisable. As a result, no changes to the current scup management measures (9-inch or 22.9 cm minimum fish size, 50-fish per person possession limit, and year-round season) are proposed.

Black Sea Bass Recreational Management Measures

The 2016 black sea bass recreational harvest limit is 2.82 million lb (1,280 mt), while the 2015 projected landings are 3.62 million lb (1,642 mt). These 2015 projected landings are based on preliminary Marine Recreational Information Program estimates through Wave 6 (November and December 2015). 2016 management measures must reduce landings by 22-percent relative to 2015 in order to constrain catch within the 2016 recreational harvest limit. Recreational black sea bass catch occurs primarily in state waters in the states of New Jersey through Massachusetts (i.e., the northern region). As

such, the Council recommends maintaining the existing black sea bass regulations for Federal waters, and implementing the necessary reduction through changes in state waters measures.

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 22-percent reduction in landings from each state. 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. The northern states' reduction, in combination with the Council's recommendation of maintaining the status quo measures in Federal waters and state waters from Delaware to North Carolina, are intended to achieve, but not exceed, the recreational harvest limit and recreational annual catch limit in 2016.

Accountability measures for the black sea bass recreational fishery utilize a rolling three-year average comparison of catch to the average of the same three years' ACLs. Because the average catch from 2012 through 2014 exceeds the average annual catch limit for those years by 37.9 percent, an accountability measure is applicable to the 2016 fishery. The 2016 accountability measures are the same as those implemented in 2015 (12.5-inch (31.8-cm) minimum size, 15-fish possession limit, and 201-day fishing season). Continuing these regulations preserves the accountability measures that were applied last year; as such, no further accountability measures are necessary for 2015.

We are proposing no changes to the current Federal waters measures (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), consistent with the Council's

recommendation. These measures maintain the accountability measures implemented in 2015. This proposal is contingent upon the northern region, established under the Commission's Addendum XXVII, implementing the required 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). The Council and NMFS expect, based on February 2016 action by the Commission's black sea bass Board, that these default measures will not be necessary.

Commercial Scup Incidental Possession Limit Change

The Council initiated a review of the scup commercial management measures in 2015 and is recommending an increase in the incidental possession limit in the winter season. Currently, the regulations require vessels retaining more than 500 lb (227 kg) of scup from November 1 through April 30, or more than 200 lb (91 kg) from May 1 through October 31, to use mesh larger than 5 inches (12.7 cm). The Council is recommending, and this rule proposes, to raise the incidental limit to 1,000 lb (454 kg) for the November-April season for vessels using mesh smaller than 5 inches (12.7 cm) to minimize regulatory discards without compromising the scup stock. Vessels using mesh larger than 5 inches (12.7 cm) may continue to land up to the targeted commercial fishery possession limit according to the applicable Federal and state rules.

Additional Regulatory Changes

This rule would also correct two errors in the commercial summer flounder regulations.

The summer flounder minimum mesh size regulations at § 648.108(a)(1) require

that any vessel landing or possessing more than 100 lb (45 kg) of summer flounder from May 1 through October 31, or 200 lb (91 kg) of summer flounder from November 1 through April 30, use at least 5.5-inch (14-cm) diamond or 6.0-inch (15-cm) square mesh “throughout the body, extension(s), and codend portion of the net.” However, the turtle excluding device (TED) regulations require summer flounder trawls fishing in the sea turtle protection area to have a TED extension with webbing no larger than 3.5 inches (9-cm). This rule would eliminate the conflict between these two regulations by specifying that the minimum mesh size restrictions do not apply to extensions needed to comply with the TED regulations.

The flynet program exemption from the summer flounder minimum mesh requirements can be found at § 648.108(b)(2)(i)-(iii). The Regional Administrator’s authority to terminate the exemption after review is incorrectly listed at § 648.108(b)(3) and should be referenced at § 648.108(b)(2)(iv), which this rule proposes to do.

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 SIR. Because no regulatory changes are proposed that would affect the recreational black sea bass or scup fisheries, they are not considered in the evaluation. There were 547 federally permitted summer flounder charter/party vessels, all of which are considered “small” by the Small Business Administration’s size standards. The commercial scup incidental possession limit change could potentially affect 649 commercial entities that had revenues generated from scup during the 2012-2014 period. Of these, 642 entities are categorized as small and 7 are categorized as large. Scup represented approximately 0.06 percent of the average receipts of the small entities considered and 0.34 percent of the average receipts of the large entities considered over the 2012-2014 time period.

The proposed measure would continue the use of conservation equivalency for summer flounder, maintain the existing scup and black sea bass recreational management measures, and increase the commercial incidental scup possession limit from 500 lb (227 kg) to 1,000 lb (454 kg). The proposed action would result in status quo measures for all three recreational fisheries in Federal waters. Further, the scup possession limit change is intended to allow vessels catching scup in the prosecution of other fisheries to keep 500 lb (227 kg) more than they are currently allowed, rather than discarding them. This is not likely to change fishing behavior, but could result in a slightly positive economic impact for those vessels. Collectively, analysis conducted by the Council indicates that these measures would have a minimal, potentially slight 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: May 18, 2016.

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 648.107, introductory text to 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 2016 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.

* * * * *

3. In § 648.108, paragraph (b)(3) is redesignated as paragraph (b)(2)(iv) and paragraph (a)(1) is revised to read as follows::

§ 648.108 Summer flounder gear restrictions.

(a) *General.* (1) Otter trawlers whose owners are issued a summer flounder permit and that land or possess 100 lb (45.4 kg) or more of summer flounder from May 1 through October 31, or 200 lb (90.7 kg) or more of summer flounder from November 1 through April 30, per trip, must fish with nets that have a minimum mesh size of 5.5-inch (14.0-cm) diamond or 6.0-inch (15.2-cm) square mesh applied throughout the body, extension(s), and codend portion of the net, except as required in a TED extension, in accordance with § 223.206(d)(2)(iii) of this title.

* * * * *

4. In § 648.125, paragraph (a)(1) is revised to read as follows:

§ 648.125 Scup gear restrictions.

(a) *Trawl vessel gear restrictions—(1) Minimum mesh size.* No owner or operator of an otter trawl vessel that is issued a scup moratorium permit may possess 1,000 lb (454

kg) or more of scup from November 1 through April 30, or 200 lb (91 kg) or more of scup from May 1 through October 31, unless fishing with nets that have a minimum mesh size of 5.0-inch (12.7-cm) diamond mesh, applied throughout the codend for at least 75 continuous meshes forward of the terminus of the net, and all other nets are stowed and not available for immediate use as defined in § 648.2.

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