

**PART 81—[AMENDED]**

■ 3. The authority citation for part 81 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

■ 4. In § 81.347 the table entitled “Virginia—Ozone (8-Hour Standard)” is amended by revising the entry for the Norfolk-Virginia Beach-Newport News

(Hampton Roads), VA area to read as follows:

**§ 81.347 Virginia.**

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**VIRGINIA—OZONE**  
[8-hour standard]

| Designated area                                                     | Designation <sup>a</sup> |             | Category/Classification |      |
|---------------------------------------------------------------------|--------------------------|-------------|-------------------------|------|
|                                                                     | Date <sup>1</sup>        | Type        | Date <sup>1</sup>       | Type |
| * * * * *                                                           |                          |             |                         |      |
| <b>Norfolk-Virginia Beach-Newport News (Hampton Roads), VA Area</b> |                          |             |                         |      |
| Chesapeake City .....                                               | 6/1/07                   | Attainment. |                         |      |
| Gloucester County .....                                             | 6/1/07                   | Attainment. |                         |      |
| Hampton City .....                                                  | 6/1/07                   | Attainment. |                         |      |
| Isle of Wight County .....                                          | 6/1/07                   | Attainment. |                         |      |
| James City County .....                                             | 6/1/07                   | Attainment. |                         |      |
| Newport News City .....                                             | 6/1/07                   | Attainment. |                         |      |
| Norfolk City .....                                                  | 6/1/07                   | Attainment. |                         |      |
| Poquoson City .....                                                 | 6/1/07                   | Attainment. |                         |      |
| Portsmouth City .....                                               | 6/1/07                   | Attainment. |                         |      |
| Suffolk City .....                                                  | 6/1/07                   | Attainment. |                         |      |
| Virginia Beach City .....                                           | 6/1/07                   | Attainment. |                         |      |
| Williamsburg City .....                                             | 6/1/07                   | Attainment. |                         |      |
| * * * * *                                                           |                          |             |                         |      |

<sup>a</sup> Includes Indian country located in each county or area except otherwise noted.

<sup>1</sup> This date is June 15, 2004, unless otherwise noted.

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[FR Doc. E7-10581 Filed 5-31-07; 8:45 am]

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

[Docket No. 070518109-7109-01; I.D. 030107B]

RIN 0648-AU60

**Fisheries of the Northeastern United States; Recreational Management Measures for the Summer Flounder, Scup, and Black Sea Bass Fisheries; Fishing Year 2007**

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

**ACTION:** Final rule.

**SUMMARY:** NMFS issues this final rule to implement recreational management measures for the 2007 summer flounder fishery and to notify the public that the recreational management measures for the scup and black sea bass fisheries remain the same as in 2006. The actions of this final rule are necessary to comply

with regulations implementing the Summer Flounder, Scup, and Black Sea Bass Fishery Management Plan (FMP) as well as to ensure compliance with the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). The intent of these measures is to prevent overfishing of the summer flounder, scup, and black sea bass resources.

**DATES:** Effective July 2, 2007, except for the amendment to § 648.107(a) introductory text, which is effective June 1, 2007.

**ADDRESSES:** Copies of supporting documents used by the Summer Flounder, Scup, and Black Sea Bass Monitoring Committees and of the Environmental Assessment, Regulatory Impact Review, and Initial Regulatory Flexibility Analysis (EA/RIR/IRFA) are available from Daniel Furlong, Executive Director, Mid-Atlantic Fishery Management Council, Room 2115, Federal Building, 300 South Street, Dover, DE 19901-6790. The EA/RIR/IRFA is also accessible via the Internet at <http://www.nero.noaa.gov>. The Final Regulatory Flexibility Analysis (FRFA) consists of the IRFA, public comments and responses contained in this final rule, and the summary of impacts and alternatives contained in this final rule. Copies of the small entity compliance guide are

available from Patricia A. Kurkul, Regional Administrator, Northeast Region, National Marine Fisheries Service, One Blackburn Drive, Gloucester, MA 01930-2298.

**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 by the Atlantic States Marine Fisheries Commission (Commission) and the Mid-Atlantic Fishery Management Council (Council), in consultation with the New England and South Atlantic Fishery Management Councils. The Summer Flounder, Scup, and Black Sea Bass Fishery Management Plan (FMP) and its implementing regulations, which are found at 50 CFR part 648, subparts A (general provisions), G (summer flounder), H (scup), and I (black sea bass), describe the process for specifying annual recreational management measures that apply in the Exclusive Economic Zone (EEZ). The states manage these fisheries 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 2007 coastwide recreational harvest limits, after deduction of research set-aside (RSA), are 6,689,004 lb (3,034 mt) for summer flounder, 2,744,200 lb (1,245 mt) for scup, and 2,473,500 lb (1,122 mt) for black sea bass. The 2007 quota specifications, inclusive of the recreational harvest limits, were determined to be consistent with the 2007 target fishing mortality rate (F) for summer flounder and the target exploitation rates for scup and black sea bass.

The proposed rule to implement annual Federal recreational measures for the 2007 summer flounder, scup, and black sea bass fisheries was published on March 15, 2007 (72 FR 12158), and contained management measures (minimum fish sizes, possession limits, and fishing seasons) intended to keep annual recreational landings from exceeding the specified harvest limits.

#### Changes From the Proposed Rule

Subsequent to the publication of the proposed rule, NMFS concluded that the summer flounder precautionary default measures, as proposed by the Council and published in the March 15, 2007, proposed rule (72 FR 12158)(a 1-fish possession limit, 18.5-inch (46.99-cm) minimum fish size, with no closed season) are inconsistent with the requirements for the precautionary default measures as outlined in Framework Adjustment 2 (Framework 2) to the FMP and do not achieve the necessary level of reduction in landings set out in the proposed rule.

Framework 2 indicates that the precautionary default measures are the set of measures that would achieve the greatest reduction in landings required for any state. Further analysis conducted by NMFS subsequent to the publication of the proposed rule has shown that the combination of minimum fish size, possession limit, and season proposed as the precautionary default measures in the proposed rule will not achieve the required reduction in landings to constrain harvest within the 2007 recreational harvest for New York. Based on its 2007 recreational harvest limit, New York is required to reduce landings by 48.6-percent from 2006 to 2007, as was indicated in the proposed rule. The proposed precautionary default measures would only have reduced landings by 41.8 percent.

However, increasing the minimum fish size to 19.0 inches (48.26cm) with

a 1-fish possession limit and no closed season will ensure that all states, including New York, would achieve the required reductions in landings necessary for 2007. These measures with the slightly larger minimum fish size would reduce landings in New York by 55.3-percent from 2006 levels, thereby achieving the necessary reduction in landings for 2007.

Therefore, NMFS is increasing the minimum fish size of the 2007 summer flounder precautionary default measures from 18.5 inches (46.99cm) to 19 inches (48.26 cm) to ensure the necessary reduction levels indicated in the proposed rule and to ensure consistency with the intent of Framework 2 that the precautionary default measures achieve the necessary level of reduction required for each individual state.

States that do not submit conservation equivalency proposals or for which proposals were disapproved by the Commission or NMFS, are required to adopt the precautionary default measures. Though no states are required to adopt the precautionary default measures for 2007, NMFS is modifying the precautionary default measures in this final rule from what was proposed, as outlined above, to ensure the reduction levels as outlined in Framework 2 are attained. The appropriate regulatory text modification to implement this change can be found following the classification section of this rule.

In addition, the coastwide measures for summer flounder contained in the proposed rule were analyzed by the Council for their effectiveness in constraining recreational landings to the coastwide recreational harvest limit as published in the **Federal Register** on December 14, 2006 (71 FR 75134). Following the Council's analysis, development of measures, and vote to implement conservation equivalency in 2007, the summer flounder recreational harvest limit for 2007 was increased by emergency rule (72 FR 2458, January 19, 2007). Additional analysis conducted by NMFS following the publication of the proposed rule has shown that the proposed coastwide measures would allow only 55-percent of the increased recreational harvest limit to be landed, if implemented for 2007. Instead, as discussed below, this rule implements state-by-state conservation equivalency measures for the 2007 summer flounder fishery. As such, the summer flounder coastwide measures are superseded by the conservation equivalency measures for the 2007 fishing year. However, these coastwide measures become the

default regulatory provisions effective January 1, 2008, when conservation equivalent measures expire. As such, the coastwide measures remain in place in 2008 until such time that new measures, either conservation equivalency or coastwide measures, are developed by the Council and the Commission and implemented by NMFS for the 2008 fishery. NMFS has decided to conduct separate notice and comment rulemaking for summer flounder coastwide measures that would be less restrictive than the measures of the proposed rule while still constraining landings within the increased recreational harvest limit, as published in the emergency rule (72 FR 2458, January 19, 2007). A proposed rule containing these revised coastwide measures will be published in the **Federal Register** as soon as possible.

#### 2007 Recreational Management Measures

Additional discussion on the development of the recreational management measures appeared in the preamble of the proposed rule and is not repeated here. All minimum fish sizes discussed below 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.

Based on the recommendation of the Commission, the Regional Administrator finds that the recreational summer flounder fishing measures proposed to be implemented by the states of Massachusetts through North Carolina for 2007 are the conservation equivalent of the season, minimum size, and possession limit prescribed in §§ 648.102, 648.103, and 648.105(a), respectively. According to the regulation at § 648.107(a)(1), vessels subject to the recreational fishing measures of this part and landing summer flounder in a state with an approved conservation equivalency program shall not be subject to the more restrictive Federal measures, and shall instead be subject to the recreational fishing measures implemented by the state in which they land. Section 648.107(a) has been amended accordingly. The management measures will vary according to the state of landing, as specified in the following table.

TABLE 1 - 2006 STATE RECREATIONAL MANAGEMENT MEASURES FOR SUMMER FLOUNDER

| State           | Minimum Fish Size      | Possession Limit | Fishing Season                                          |
|-----------------|------------------------|------------------|---------------------------------------------------------|
| MA              | 17.5 inches (44.45 cm) | 5 fish           | June 10 through August 15                               |
| RI              | 19.0 inches (48.26 cm) | 7 fish           | May 18 through September 16                             |
| CT              | 18.0 inches (45.72 cm) | 5 fish           | April 30 through September 5                            |
| NY              | 19.5 inches (49.53 cm) | 4 fish           | January 1 through December 31                           |
| NJ              | 17.0 inches (43.18 cm) | 8 fish           | May 26 through September 10                             |
| DE              | 18.0 inches (45.72 cm) | 4 fish           | January 1 through December 31                           |
| MD <sup>1</sup> | 15.5 inches (39.37 cm) | 4 fish           | January 1 through December 31                           |
| VA              | 18.5 inches (46.99 cm) | 5 fish           | April 1 through July 22 and July 29 through December 31 |
| NC <sup>2</sup> | 14.5 inches (36.83 cm) | 8 fish           | January 1 through December 31                           |

<sup>1</sup> Measures for the ocean waters off MD in the Atlantic Ocean and coastal bays; for the Chesapeake Bay, a 15.0-inch (38.1-cm) minimum fish size, a 2-fish possession limit, and a fishing season of January 1 through December 31 applies.

<sup>2</sup> Measures for the ocean waters off NC in the Atlantic Ocean; for internal waters, a 14.0-inch (35.56-cm) minimum fish size, a 8-fish possession limit, and a fishing season of January 1 through December 31 applies.

Table 2 contains the coastwide bass in effect for 2007 and codified. Those at 50 CFR Part 648 subparts H and I. Federal measures for scup and black sea bass. These measures are unchanged from

TABLE 2 - 2007 SCUP AND BLACK SEA BASS RECREATIONAL MANAGEMENT MEASURES

| Fishery        | Minimum Fish Size |      | Possession Limit | Fishing Season                                                      |
|----------------|-------------------|------|------------------|---------------------------------------------------------------------|
|                | inches            | cm   |                  |                                                                     |
| Scup           | 10                | 25.4 | 50 fish          | January 1 through February 28, and September 18 through November 30 |
| Black Sea Bass | 12                | 30.5 | 25 fish          | January 1 through December 31                                       |

As has occurred in the past 5 years, the scup fishery in state waters will be managed under a regional conservation equivalency system developed through the Commission. Because the Federal FMP does not contain provisions for conservation equivalency, and states may adopt their own unique measures, the Federal and state recreational scup management measures will differ for 2007.

#### Comments and Responses

Eight comments were received regarding the proposed recreational management measures (72 FR 12158, March 15, 2007). One individual submitted a single question as a comment, whose relevance to the recreational management measures could not be ascertained and therefore, is not responded to in this section.

*Comment 1:* The commenter expressed concern about the impact of commercial fishing on the summer flounder, scup, and black sea bass total stocks and supports reduction of the

total allowable landings for these species by 50 percent in 2007, and by an additional 10 percent each subsequent year. This commenter also stated that the recreational harvest limit reductions for 2007 were not sufficient.

*Response:* This final rule implements management measures (minimum fish sizes, possession limits, and fishing seasons) intended to keep annual recreational landings from exceeding the specified harvest limits. These limits have been set for 2007 at levels that will effectively constrain harvest within the specified F for each species under the FMP. As described in the proposed rule, the FMP established Monitoring Committees (Committees) for the summer flounder, scup, and black sea bass 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 (i.e., minimum fish size, possession limit, and fishing season) necessary to achieve the recreational harvest limits established for each of the three fisheries for the upcoming fishing year. While NMFS acknowledges that consideration of total allowable landings and quota allocation are important, this final rule is not the proper mechanism to address these general issues.

*Comment 2:* The commenter stated that the models used to create catch limits are not accurate and are not an accurate reflection of future targets.

*Response:* It is assumed that this comment is in reference to the models used in the derivation of the summer flounder TAL and for the rebuilding target for the summer flounder stock, as the comment is similar to many that were received on the proposed rule for the 2007 initial specifications (71 FR 62972, October 27, 2006).

The information used to set the summer flounder TAL is the best scientific information available,

consistent with National Standard 2 of the Magnuson-Stevens Act. The information used in TAL setting, including the model and methods applied to it, have undergone substantial peer review in recent years. While recommendations have been made to develop additional modeling approaches, peer reviews have confirmed the current model and modeling approaches to be statistically valid for the annual stock assessment updates that provide the foundation for establishing the TAL. None of the peer-reviewed science utilized in setting summer flounder catch limits indicates that the rebuilding target cannot be attained within the rebuilding period or that the biomass target is incorrect.

*Comment 3:* This commenter wrote in opposition to the non-preferred coastwide alternative, stating that implementation of the coastwide measures would have significant economic impacts on her small bait and tackle shop in New Jersey.

*Response:* NMFS is implementing, though this final rule, conservation equivalency measures as developed by the individual states. Under this approach, each state, including New Jersey, developed and will implement unique management measures appropriate to that state that provide equivalent conservation as the Federal coastwide measures developed to achieve the overall recreational harvest limit. For 2007, New Jersey will implement a 17.0-inch (43.18-cm) minimum fish size, an 8-fish possession limit, and a May 26 through September 10 fishing season, as compared to the proposed coastwide measures of a 1-fish possession limit, 19.0-inch (48.26-cm) minimum fish size, and no closed season. It is expected that the measures developed by and implemented in New Jersey will assist in mitigating the economic impacts that would occur under the coastwide alternative, as outlined in the Initial Regulatory Flexibility Analysis (IRFA) contained in the proposed rule (71 FR 12158, March 15, 2007).

*Comments 4 through 7:* Several commenters urged NMFS to reject state-by-state conservation equivalency in favor of coastwide measures; advocated for the implementation of coastwide measures as developed by the Commission's Technical Committee following the emergency rule to increase the 2007 TAL (72 FR 2458, January 19, 2007), not those adopted by the Council and the Board that were based on the initial 2007 TAL published on December 14, 2006 (71 FR 75134); and questioned if the best available science was used in development of the 2007

recreational management measures. Specifically, one such commenter questioned the use of applying data from the Marine Recreational Fishery Statistics Survey (MRFSS) and For-Hire Survey (FHS) on a state-by-state rather than a coastwide (regional) basis. Another commenter indicated that the coastwide measures adopted by the Council and the Board were not based on the January 19, 2007, emergency rule (72 FR 2458) and therefore, were not the best available science.

*Response:* NMFS is implementing, though this final rule, the Council and Board's preferred alternative of conservation equivalency, for the reasons previously outlined in the preamble to this final rule. Further, NMFS will be conducting a separate rulemaking, as previously discussed, to address potential changes to the coastwide measures in light of the increased TAL. That rulemaking will not replace conservation equivalency with coastwide measures.

NMFS acknowledges that the timing of the Magnuson-Stevens Act reauthorization that was passed by the 109<sup>th</sup> Congress on December 9, 2006, and the joint December 11, 2006, meeting at which the Council and Board voted for conservation equivalency, did not permit for detailed analysis of coastwide measures to constrain recreational harvest to what would eventually be the increased TAL as published on January 19, 2007 (72 FR 2458). However, a discussion was held at the joint Council and Board meeting wherein the assembled group discussed what impacts increasing the TAL might have on coastwide measures.

Consequently both the Council and Board did consider this in their decision making. The Council and Board voted to adopt conservation equivalency for 2007, in light of these discussions, and forwarded that recommendation to NMFS. Further, NMFS acknowledges that the Council's analysis of the coastwide measures was crafted on the TAL as published on December 14, 2006 (71 FR 75134), and as such, would be highly conservative (i.e., would constrain landings to 55 percent of the recreational harvest limit as increased by the January 19, 2007, emergency rule (72 FR 2458)). NMFS is aware that subsequent analyses have been conducted by the Board's Technical Committee to craft more liberal coastwide measures that would still constrain recreational landings within the recreational harvest limit as increased by the January 19, 2007 (72 FR 2458), emergency rule. These alternative coastwide measures have not

been forwarded, through a majority vote from their memberships, from the Council and Board as a recommendation to replace conservation equivalency for 2007. Consequently, NMFS does not have a reasonable basis upon which to disapprove the Council and Board's preferred alternative in favor of the coastwide measures analyzed by the Board's Technical Committee in this final rule. The Council and the Board have elected to utilize conservation equivalency as the means to manage the recreational summer flounder fishery each year since the implementation of Framework 2.

MRFSS and FHS-supplied data have been utilized each year since the 2001 implementation of Framework 2 to craft state-by-state conservation equivalent measures. NMFS acknowledges that a recent review of MRFSS by the National Academies of Science has made substantial recommendations for the overhaul and redesign of the survey so that the data provided will better inform the agency's management and policy decisions. However, in the interim period while these changes are being undertaken by NMFS, the MRFSS and FHS supplied data constitute the only available information to formulate recreational fisheries management advice and, as such, its use is consistent with National Standard 2. These data may be improved by using larger regional or coastwide aggregations, but their use on a state-by-state basis, as has been done for the past 6 years, is not inappropriate for creating the 2007 conservation equivalent measures.

### Classification

NMFS has determined that the final rule is necessary for the conservation and management of the summer flounder, scup, and black sea bass fishery and that it is consistent with the Magnuson-Stevens Fishery Conservation and Management Act and other applicable laws.

There is good cause under 5 U.S.C. 553(d)(3) to waive the 30-day delay in effective date for the summer flounder recreational management measures contained in this rule (§ 648.107(a)). The linchpin of NMFS's decision whether to proceed with the coastwide measures or to give effect to the conservation equivalent measures is advice from the Commission as to the results of its review of the plans of the individual states. This advice has only recently been received via a letter dated May 1, 2007. The recreational summer flounder fishery has commenced in all states and participation and landings are expected to increase through late spring and early summer. The party and charter vessels

from the various states are by far the largest component of the recreational fishery that fish in the EEZ. The Federal coastwide regulatory measures for the three species that were codified last year remain in effect. The Federal coastwide measures for the summer flounder fishery do not achieve the necessary reduction in recreational landings to constrain the fishery to the 2007 recreational harvest limit. It is, therefore, imperative that NMFS implement measures, as quickly as possible, for the 2007 recreational summer flounder fishery to ensure that the mortality objectives of the 2007 recreational harvest limit are not compromised. The conservation equivalent measures approved by the Commission and implemented by this rule are such measures. The state-by-state conservation equivalent measures will, upon their implementation, restrict the recreational summer flounder coastwide landings within the 2007 recreational harvest limit.

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

Included in this final rule is the FRFA prepared pursuant to 5 U.S.C. 604(a). The FRFA incorporates the economic impacts described in the IRFA, a summary of the significant issues raised by the public comments in response to the IRFA, and NMFS's responses to those comments, and a summary of the analyses completed to support the action. A copy of the EA/RIR/IRFA is available from the Council (see ADDRESSES).

#### *Final Regulatory Flexibility Analysis*

##### *Statement of Objective and Need*

A description of the reasons why this action is being taken, and the objectives of and legal basis for this final rule are explained in the preambles to the proposed rule and this final rule and are not repeated here.

##### *Summary of Significant Issues Raised in Public Comments*

Two commenters raised the issue, supported by two additional commenters, that the non-preferred coastwide measures alternative, as analyzed and proposed by the Council and subsequently published in the proposed rule by NMFS, had been designed to constrain harvest to the recreational harvest level contained in the December 14, 2006 (71 FR 75134), specification final rule, not to the recreational harvest level of the January 19, 2007 (72 FR 2458), emergency rule that increased the 2007 specifications. NMFS finds these comments compelling

and is, as previously indicated, planning on conducting notice and comment rule making to re-propose coastwide measures designed to constrain landings within the increased recreational harvest limit, as published in the January 19, 2007 (72 FR 2458), emergency rule. However, as these coastwide measures serve as the backstop in 2008 once conservation equivalent measures expire on December 31, 2007, addressing these comments in a later rulemaking does not affect actions taken herein. Additional information on this change is outlined in the preamble under the "Changes from the Proposed Rule" section. No additional changes to the proposed rule were required to be made as a result of the public comments. A summary of the comments received, and the responses thereto, are contained in the "Comments and Responses" section of this preamble.

##### *Description and Estimate of Number of Small Entities to Which This Rule Will Apply*

The Council estimated that the proposed measures could affect any of the 920 vessels possessing a Federal charter/party permit for summer flounder, scup, and/or black sea bass in 2005, the most recent year for which complete permit data are available. However, only 331 of these vessels reported active participation in the recreational summer flounder, scup, and/or black sea bass fisheries in 2005.

##### *Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements*

No additional reporting, recordkeeping, or other compliance requirements are included in this final rule.

##### *Description of the Steps Taken to Minimize Economic Impact on Small Entities*

Under the conservation equivalency approach, each state may implement unique management measures appropriate to that state to achieve state-specific harvest limits, 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 annual recreational harvest limit. The conservation equivalency approach allows states flexibility in the specification of management measures, unlike the application of one set of uniform coastwide measures. It is not possible to further mitigate economic impacts on small entities because the specification

of the recreational management measures (minimum fish size, possession limits, and fishing seasons) contained in this final rule is constrained by the conservation objectives of the FMP.

The economic analysis conducted in support of this action assessed the impacts of the various management alternatives. In the EA, the no action alternative for each species is defined as the continuation of the management measures as codified for the 2006 fishing season. For summer flounder, state-specific implications of the no-action (coastwide) alternative of a 17-inch (43.18-cm) minimum fish size, a 4-fish possession limit, and no closed season would not achieve the mortality objectives required, and, therefore, cannot be continued for the 2007 fishing season.

The implications of the no-action alternative are not substantial for scup and black sea bass. Landings of these species in 2006 were less than their respective target for black sea bass and within the percent standard error for scup, and the status quo measures are expected to constrain landings to the 2007 targets. The no-action measures were analyzed in Summer Flounder Alternative 2, Scup Alternative 1, and Black Sea Bass Alternative 1.

At this time, it is not possible to determine the economic impact of summer flounder conservation equivalency on each state. The specific measures adopted for each state were only made available to NMFS on May 1, 2007, and were unavailable for analysis during this rulemaking. However, economic impact is likely to be proportional to the level of landings reductions required for each individual state. If the conservation equivalency alternative is effective at achieving the recreational harvest limit, then it is likely to be the only alternative that minimizes economic impacts, to the extent practicable, yet achieves the biological objectives of the FMP.

Further, NMFS has no authority to dictate, prescribe, or otherwise modify the measures adopted by each state under conservation equivalency. NMFS discretion in this regard is limited to a decision on whether to allow conservation equivalency as a replacement for uniform coastwide measures, and the basis for this decision is limited to a determination of whether the measures adopted under conservation equivalency achieve the biological objectives of the FMP.

Under § 648.107, vessels landing summer flounder in any state that does not implement conservation equivalent measures are subject to the

precautionary default measures, consisting of an 19-inch (48.26-cm) minimum fish size, a possession limit of one fish, and no closed season. The suites of conservation equivalent measures proposed by each state are less restrictive than the precautionary default measures. Therefore, because states have a choice as to the specific measures to apply to landings in each state, it is more rational for the states to adopt the conservation equivalent measures that they have proposed and that result in fewer adverse economic impacts than to adopt the more restrictive measures that contained in the precautionary default alternative.

For the proposed rule, average party/charter losses for each of the 18 potential combinations of alternatives were estimated for federally permitted vessels. Predicted average losses for New York were presented as an example, and ranged from \$4,834 per vessel under the combined effects of Summer Flounder Alternative 1, Scup Alternative 1, and Black Sea Bass Alternative 2, to \$6,122 per vessel under the combined effects of the Summer Flounder Alternative 2, Scup Alternative 2, and Black Sea Bass Alternative 3 (assuming a 25-percent reduction in effort for affected trips).

#### *Small Entity Compliance Guide*

Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996 states that, for each rule or group of related rules for which an agency is required to prepare a FRFA, the agency shall publish one or more guides to

assist small entities in complying with the rule, and shall designate such publications as "small entity compliance guides." The agency shall explain the actions a small entity is required to take to comply with a rule or group of rules. As part of this rulemaking process, a letter to permit holders that also serves as the small entity compliance guide was prepared and will be sent to all holders of Federal party/charter permits issued for the summer flounder, scup, and black sea bass fisheries. In addition, copies of this final rule and the small entity compliance guide are available from NMFS (see **ADDRESSES**) and at the following website: <http://www.nero.noaa.gov>.

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

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: May 25, 2007.

**Samuel D. Rauch III,**

*Deputy Assistant Administrator For Regulatory Programs, National Marine Fisheries Service.*

■ For the reasons set out in the preamble, NMFS amends 50 CFR part 648 to read 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 § 648.107, paragraph introductory text (a) 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 2007 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 – January 1 through December 31; minimum size – 19.0 inches (48.26 cm); and possession limit – one fish.

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