

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 980302051-8051-01; I.D. 021198B]

RIN 0648-AK78

Fisheries of the Northeastern United States; Fishery Management Plan for the Summer Flounder, Scup, and Black Sea Bass Fisheries; Recreational Measures for the 1998 Summer Flounder, Scup, and Black Sea Bass Fisheries

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

ACTION: Proposed rule, request for comments.

SUMMARY: NMFS issues this proposed rule to amend the regulations implementing the Fishery Management Plan for the Summer Flounder, Scup, and Black Sea Bass Fisheries (FMP). This rule proposes a possession limit of 8 fish per person and a minimum fish size of 15 inches (38 cm) for the 1998 summer flounder recreational fishery; a minimum fish size of 10 inches (25.4 cm) and an August 1 through August 15 seasonal closure for the 1998 black sea bass recreational fishery; and no change in the current regulations for the 1998 scup recreational fishery. The intent of this rule is to comply with the FMP implementing regulations that require NMFS to publish measures for the upcoming fishing year that will prevent overfishing of these resources.

DATES: Public comments must be received on or before April 16, 1998.

ADDRESSES: Copies of the Environmental Assessment prepared for the 1998 summer flounder, scup, and black sea bass specifications and supporting documents used by the Monitoring Committees are available from: Executive Director, Mid-Atlantic Fishery Management Council, Room 2115, Federal Building, 300 S. New Street, Dover, DE 19901-6790. Comments on the proposed rule should be sent to: Andrew A. Rosenberg, Ph.D., Regional Administrator, Northeast

Region, NMFS, One Blackburn Drive, Gloucester, MA 01930. Please mark the outside of the envelope "Comments on the 1998 Recreational Fishing Measures for Summer Flounder, Scup, and Black Sea Bass."

FOR FURTHER INFORMATION CONTACT:

David M. Gouveia, Fishery Management Specialist, (978) 281-9280.

SUPPLEMENTARY INFORMATION: The FMP was developed jointly 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. Implementing regulations for the fishery are found at 50 CFR part 648.

Sections 648.100, 648.120, and 648.140 outline the process for determining annual commercial and recreational catch quotas and other restrictions for the summer flounder, scup, and black sea bass fisheries. Pursuant to the FMP, Monitoring Committees (Committee) have been established for each of the three fisheries. Each Committee is comprised of representatives from the Commission, NMFS, and the Mid-Atlantic, New England, and South Atlantic Fishery Management Councils. The FMP requires each Committee to review, on an annual basis, scientific and other relevant information and to recommend harvest limits and other restrictions necessary to achieve the fishing mortality rates (F) of the summer flounder, scup, and black sea bass fisheries. For 1998, the FMP defines F as 0.24 for summer flounder; 0.72 for scup; and 0.73 for black sea bass.

Each Committee reviews the following information annually: (1) Commercial and recreational catch data; (2) current estimates of stock mortality; (3) stock status; (4) recent estimates of recruitment; (5) virtual population analysis (a method for analyzing fish stock abundance); (6) levels of regulatory noncompliance by fishermen or individual states; (7) impact of fish size and net mesh regulations; (8) impact of gear, other than otter trawls, on the mortality of summer flounder; and (9) other relevant information. Pursuant to §§ 648.100, 648.120, and 648.140, after this review, each Committee recommends to the Council and Commission management measures to assure achievement of the appropriate fishing mortality rate for each fishery. The Council and Commission, in turn, make a recommendation to the Regional Administrator.

Final specifications for the 1998 summer flounder, scup, and black sea bass fisheries were published on

December 18, 1997 (62 FR 66304), including a coastwide recreational harvest limit of 7.41 million lb (3.36 million kg) for summer flounder; 1.553 million lb (0.70 million kg) for scup; and 3.148 million lb (1.43 million kg) for black sea bass. The recreational season, possession limit, and minimum size for 1998 were not established as part of the final specifications because recreational catch data for 1997 were not available for the Committees' use in evaluating the effectiveness of the 1997 measures. Shortly after preliminary data became available, each Committee met to review the 1997 data and to recommend measures for the 1998 recreational fisheries intended to complement the recreational harvest limits.

Summer Flounder

Using available data and catch estimates for the final months of 1997, the Council estimates that the summer flounder recreational sector exceeded its harvest limit by approximately 1.88 million lb (0.85 million kg). Since the 1998 specifications allocate the same recreational harvest level as in 1997 (7.41 million lb (3.36 million kg)), a 20.2 percent reduction in recreational landings from the 1997 level is needed. To accomplish this reduction, the Committee recommended either increasing the recreational minimum fish size to 15 inches (38 cm) and reducing the possession limit to 6 fish per person or maintain the minimum size at 14.5 inches (36.8 cm) and reduce the possession limit to 3 fish per person.

The Council and Commission reviewed the Committee recommendation but felt it was more restrictive than necessary. Instead, to achieve the needed reduction, the Council and the Commission proposed two alternative options, and proposed to allow each state to select either of the two sets of measures for implementation. The first option recommended an increase in the recreational minimum fish size to 15 inches (38 cm) and a reduction in the possession limit from 10 to 8 fish per person. The second option would maintain the minimum size at 14.5 inches (36.8 cm) and reduce the possession limit to six fish per person. Additionally, the second option included a closed season provision that would reduce the 1998 landings in a state by 8 percent from its 1997 landings level. The reduction attributed to each month would be calculated based on 1992-96 data.

The request by the Council to implement two distinct management regimes for summer flounder triggered

lengthy discussion concerning the legality of submitting alternative proposals to NMFS for review. The Council noted that if it was not found to be a legal option, it recommended the 15-inch (38-cm) minimum size and eight fish per person possession limit. At the December 1997 Council meeting, the Regional Attorney, Northeast Region, was asked for legal advice with respect to this issue. At that time, the Regional Attorney advised preliminarily that the underlying amendments (Amendment 2 for Summer Flounder and Amendment 9 for Black Sea Bass), did allow the setting of alternative possession limits and minimum sizes for summer flounder and black sea bass. The Regional Attorney also opined that the amendments did not allow a closure other than before and after a solitary continuous open season. After a more thorough review, the Regional Attorney advised that the amendments do not allow the Council to recommend alternative minimum sizes and possession limits or the states to adopt a minimum size or possession limit that differs from the measures specified by the Council. Therefore, NMFS is proposing to increase the recreational minimum fish size to 15 inches (38 cm) and to reduce the possession limit from 10 to 8 fish per person.

The Council believes that this combination of limits—the 15-inch (38-cm) minimum fish size and the eight fish possession limit—will constrain anglers to the 7.41 million lb (3.36 million kg) harvest limit in 1998. The possession limit is higher than that recommended by the Committee, which felt that it must be reduced to compensate for increased fish availability as the stock rebuilds. However, the eight fish per person limit is projected to reduce recreational landings by approximately 23 percent even if only 75 percent of the anglers comply with the proposed restrictions. Many Council members believe compliance is higher than 75 percent and the reduction in landings will be greater if that is true.

NMFS concurs with the Council recommendation. The analysis indicates that the decrease in the possession limit and the increase in the minimum fish size is expected to constrain the harvest to the specified level. In addition to these measures, the Council and Commission took action to reduce discard mortality associated with the recreational fishery. This complements the action it took for the commercial fishery by requiring each state to establish a 15 percent commercial quota set aside for a bycatch fishery.

During the 1998 fishery, the Council intended to recommend a recreational hook requirement to address discard mortality in the summer flounder recreational sector. Because there are so few studies available on which to base hook size requirements for summer flounder, the Council and Commission took action based on the limited studies available and the testimony from fishery participants. Accordingly, they intend to publicize their support for voluntary use of circle hooks greater than 2/0 in size when fishing for summer flounder. Given the absence of definitive data, NMFS believes this is a reasonable way to begin to address this issue for the recreational fishery.

Black Sea Bass

The first year that the FMP requires specification of a recreational harvest level for black sea bass is 1998. In 1997, the only recreational measure was a minimum fish size of 9 inches (22.9 cm). Because 70 percent of the landings occur from September through December and 1997 data are not available, the Council recommended that 1996 data be used to estimate the effects of fish size and possession limits. Relative to the 1996 data, landings would have to be reduced 47 percent to achieve the 1998 harvest limit of 3.148 million lb (1.43 kg). To accomplish this reduction, the Council and the Commission proposed two alternative options and proposed to allow each state to select either of the two measures for implementation. The first option proposed to increase the recreational minimum fish size to 10 inches (25.4 cm), establish an August 1 through August 15 seasonal closure, and set no possession limit. The second option, proposed to increase the recreational minimum fish size to 10 inches (25.4 cm), impose a 20 fish per person possession limit, and not to impose a seasonal closure.

As discussed above for summer flounder, the proposal by the Council and Commission to allow states to choose between two distinct management regimes was found inconsistent with the FMP according to the Regional Attorney. Therefore, NMFS proposes to increase the recreational minimum fish size to 10 inches (25.4 cm), establish an August 1 through August 15 seasonal closure, and not to impose a possession limit. Based on the staff analysis presented at the Council meeting, this combination of measures is expected to constrain anglers to the 3.148 million lb (1.43 million kg) harvest limit in 1998.

Scup

The only measure in place for the 1997 scup recreational fishery was a 7-inch (17.78-cm) minimum fish size. The Council used available data and catch estimates for the final months of the 1997 scup recreational fishery to project scup landings to be below the 1997 harvest limit (1.947 million lb (0.88 million kg)) by approximately 17 percent. The difference between the projected 1997 landings (1.616 million lb (0.73 million kg)) and the 1998 target limit (1.553 million lb (0.70 million kg)) is small.

The Council and Commission recommended no change in the current recreational regulations for scup in 1998. The Council believes that the 7-inch (17.78-cm) minimum fish size will constrain anglers to the 1.553 million lb (0.70 million kg) harvest limit in 1998 because of the limited fish availability associated with low stock levels. NMFS concurs with the Council/Commission recommendation.

Classification

This proposed rule has been determined to be not significant for purposes of E.O. 12866.

The Assistant General Counsel for Legislation and Regulation, Department of Commerce, certified to the Chief Counsel 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 as follows:

It is unlikely that the measures that would be implemented by this action would decrease ex-vessel revenues by more than 5 percent for more than 20 percent of the small entities engaged in the summer flounder, scup, and black sea bass fisheries. It is not expected that any small entities in these recreational fisheries will cease operations as a result of this action. The impacts were evaluated when the recreational coastwide harvest levels were analyzed as part of the proposed and final 1998 specifications. The review examined the impact the final 1998 specifications would have on all vessels that landed any of these three species in 1996. Impacts were examined by presuming a 23-percent reduction in summer flounder landings, a 47-percent reduction in black sea bass, and no reduction in scup landings. While it is possible that the recreational harvest limit for 1998 could cause some concern for recreational fishermen, there is no indication that it will lead to a decline in the demand for recreational trips. Within recreational fishing there are numerous alternative target species, and the number of trips targeting a given species in any given year is quite variable. For example, recreational fishing trips upon which summer flounder were landed have fluctuated over the past 4–5 years without

any discernible trend. Trips for black sea bass have similarly fluctuated. By contrast, scup targeted trips have been declining in recent years, and those declining years correspond to dramatic increases in trips taken where striped bass was the target species. However, little information is available to draw any causal inferences linking management regulations to switching behavior among the myriad of species available to recreational anglers. In the aggregate, the total number of recreational trips in the Mid-Atlantic region have remained relatively stable with a slight upward trend since 1993. It is likely that recreational anglers will target other species that are relatively more abundant (such as black sea bass) when faced with potential reductions in the amount of summer flounder and black sea bass that they are allowed to catch due to decreases in the respective recreational harvest limits. Since the proposed measures for each of these fisheries do not significantly change measures previously adopted, they are not expected to alter participation in the fishery. Therefore, this rule most likely would not have a significant impact on a substantial number of small entities.

List of Subjects in 50 CFR Part 648

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: March 11, 1998.

David L. Evans,

*Deputy Assistant Administrator for Fisheries,
National Marine Fisheries Service.*

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

PART 648—FISHERIES OF THE NORTHEASTERN UNITED STATES

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

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

2. In § 648.103, paragraph (b) is revised to read as follows:

§ 648.103 Minimum fish sizes.

(b) The minimum size for summer flounder is 15 inches (38 cm) TL for all vessels that do not qualify for a moratorium permit, and party and charter boats holding moratorium permits, but fishing with passengers for hire or carrying more than three crew members, if a charter boat, or more than five crew members, if a party boat.

3. In § 648.105, the first sentence of paragraph (a) is revised to read as follows:

§ 648.105 Possession restrictions.

(a) No person shall possess more than eight summer flounder in, or harvested from, the EEZ unless that person is the owner or operator of a fishing vessel issued a summer flounder moratorium permit or is issued a summer flounder dealer permit. * * *

4. Section 648.142 is revised to read as follows:

§ 648.142 Time restrictions.

Vessels that are not eligible for a moratorium permit under § 648.4(a)(6) and fishermen subject to the possession

limit may not fish for black sea bass from August 1 through August 15. This time period may be adjusted pursuant to the procedures in § 648.140.

* * * * *

5. In § 648.143, paragraph (a) is revised, existing paragraph (b) is redesigned as paragraph (c), and new paragraph (b) is added to read as follows:

§ 648.143 Minimum fish sizes.

(a) The minimum size for black sea bass is 10 inches (25.4 cm) total length for all vessels issued a moratorium permit under § 648.4(a)(7) that fish for or retain black sea bass in or from U.S. waters of the western Atlantic Ocean from 35°15.3' N. Lat., the latitude of Cape Hatteras Light, North Carolina, northward to the U.S.-Canada border. The minimum size may be adjusted for commercial vessels pursuant to the procedures in § 648.140.

(b) The minimum size for black sea bass is 10 inches (25.4 cm) TL for all vessels that do not qualify for a moratorium permit, and party and charter boats holding moratorium permits, but fishing with passengers for hire or carrying more than three crew members, if a charter boat, or more than five crew members, if a party boat. The minimum size may be adjusted for recreational vessels pursuant to the procedures in § 648.140.

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