

summer flounder, scup, and black sea bass fisheries are fully underway. In 2002, recreational black sea bass landings exceeded the recreational harvest limit by approximately 30 percent. This information was not available until development of this rule was begun. Immediate action to impose a more stringent minimum fish size in the black sea bass fishery must be taken to slow the recreational harvest of black sea bass and enhance the probability that the black sea bass harvest limit will not be exceeded in 2003. For summer flounder, this action is necessary to achieve consistency between state and Federal measures. Recreational summer flounder landings have exceeded the recreational harvest limits by an average of 50 percent over the 1996–2002 period. Failure to implement these provisions immediately could result in similar overharvest in 2003. Furthermore, because the Federal fishery is currently operating under status quo measures and the states have already implemented measures for state waters, inconsistencies between state and Federal regulations also can lead to confusion for operators of federally-permitted vessels. The Assistant Administrator for Fisheries, NOAA (AA), therefore finds good cause under 5 U.S.C. 553(d)(3) to waive the 30-day delay in effectiveness of the 2003 summer flounder and black sea bass recreational measures.

For the scup fishery, the recreational sector is currently fishing under the Federal EEZ measures, which allow for a possession limit of only 20 fish. This final rule will increase the possession limit to 50 fish, thereby relieving the possession limit restriction. This increase is being implemented to allow the recreational fishing sector to achieve the recreational harvest limit. The improving status of these fisheries has allowed NOAA Fisheries to implement these regulations, which provide some relief to the recreational sector from the current, more restrictive, measures. Implementation of the revised possession limit as soon as possible is important to allow for the increased scup fishing opportunities intended by the Council in amending this regulation. Because the increase to the possession limit relieves a restriction on the recreational fishing industry, the AA finds that the 30-day delayed effectiveness period of the scup regulations contained within this final rule does not apply, pursuant to 5 U.S.C. 553(d)(1).

Included in this final rule is the Final Regulatory Flexibility Analysis prepared pursuant to 5 U.S.C. 604(a). The FRFA is composed of the IRFA, the comments

(and responses) on the proposed rule, and the analyses completed in support of this action.

#### *Final Regulatory Flexibility Analysis*

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

A description of the reasons why action by the agency is being taken and the objectives of 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*

No comments were received on the economic impacts of the measures contained in the proposed rule.

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

The Mid-Atlantic Fishery Management Council (Council) estimated that the proposed action could affect any of the 760 vessels possessing a Federal party/charter permit for summer flounder, scup, and/or black sea bass in 2001, the most recent year for which complete permit data are available. Only 368 of these vessels reported active participation in the recreational summer flounder, scup, and/or black sea bass fisheries in 2001.

##### *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*

It is not possible to further mitigate economic impacts on small entities because the Council selected the alternative with least significant impacts relative to the other alternatives determined to achieve the biological objectives. Specifications of recreational fish size limits, possession limits, and open fishing seasons is constrained by the conservation objectives of the FMP, and implemented at 50 CFR part 648 under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act).

The economic analysis 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 implemented for the 2002 fishing season. The Council did not analyze an alternative combining the status quo measures in place for all

three species. In consideration of the Council-recommended recreational harvest limits established for the 2003 fishing year, implementation of the same recreational measures established for the 2002 fishing year would be inconsistent with the goals and objectives of the FMP and its implementing regulations, and, because it could result in overfishing of the black sea bass fishery, it also would be inconsistent with National Standard 1 of the Magnuson-Stevens Act. Therefore, the no action alternative was not considered to be a reasonable alternative to the preferred action and its collective impacts were not analyzed in the EA/ RIR/IRFA. The no action measure for summer flounder was analyzed in Alternative 1, in combination with preferred measures for scup and black sea bass. The no action measures for scup and black sea bass were considered as part of Alternative 2, in combination with the non-preferred coastwide measures for summer flounder, i.e., the measures that would be implemented if conservation equivalency were not implemented in the final rule. A summary of the economic impacts of the measures to be implemented follow.

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

Landings projections for 2002 indicate that Virginia (VA) is the only state required to reduce summer flounder landings (by 11 percent) in 2003. States other than VA do not require any reductions in recreational summer flounder landings, if their current regulations are maintained. At this time, it is not possible to determine the economic impact of conservation equivalency for Virginia. However, it may be proportional to the level of landings reductions required. If the preferred conservation equivalency alternative is effective at achieving the recreational harvest limit, then it is likely to be the only alternative that minimizes economic impacts, to the extent practicable, yet achieves the biological objectives of the FMP. Because states have a choice of specific measures to implement, it is more rational for the states to adopt conservation equivalent measures that result in fewer adverse economic impacts than to adopt the much more restrictive measures contained in the precautionary default alternative.

The impacts of the non-preferred summer flounder coastwide alternative (in Alternative 2), which proposes a 17-inch (43.2-cm) minimum fish size, a possession limit of four fish per person, and no closed season, were evaluated. Impacted trips were defined as