



DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

**[Docket No. FAA-2009-0293;
Directorate Identifier 2008-NM-221-AD]
RIN 2120-AA64**

**Airworthiness Directives; Boeing
Model 747-100, -100B, -100B SUD,
-200B, -200C, -200F, -300, -400, -400D,
-400F, and 747SR Series Airplanes**

AGENCY:

Federal Aviation Administration (FAA), DOT.

ACTION:

Notice of proposed rulemaking (NPRM).

SUMMARY:

We propose to adopt a new airworthiness directive (AD) for certain Boeing Model 747 airplanes identified above. This proposed AD would require replacing the inboard trailing edge (TE) flap transmission carbon disk no-back brakes with skewed roller no-back brakes at the TE flap transmission, positions 4 and 5. This proposed AD results from reports of the inboard TE flaps blowing back due to the failure of a transmission carbon disk no-back brake. The no-back brake did not hold the TE flaps in the commanded position. We are proposing this AD to prevent a decrease of the aerodynamic controllability of the airplane, which could adversely affect the airplane's continued safe flight and landing.

DATES:

We must receive comments on this proposed AD by May 18, 2009.

ADDRESSES:

You may send comments by any of the following methods:

Federal eRulemaking Portal: Go to <http://www.regulations.gov>. Follow the instructions for submitting comments.

Fax: 202-493-2251.

Mail: U.S. Department of Transportation, Docket Operations, M-30, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue, SE., Washington, DC 20590.

Hand Delivery: U.S. Department of Transportation, Docket Operations, M-30, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For service information identified in this proposed AD, contact Boeing Commercial Airplanes, Attention: Data Services Management, P.O. Box 3707, MC 2H-65, Seattle, Washington 98124-2207; telephone 206-544-5000, extension 1; fax 206-766-5680; e-mail me.boecom@boeing.com; Internet <https://www.myboeingfleet.com>. You may review copies of the referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington. For information on the availability of this material at the FAA, call 425-227-1221 or 425-227-1152.

Examining the AD Docket

You may examine the AD docket on the Internet at <http://www.regulations.gov>; or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this proposed AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Office (telephone 800-647-5527) is in the ADDRESSES section. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT:

Douglas Tsuji, Aerospace Engineer, Systems and Equipment Branch, ANM-130S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98057-3356; telephone (425) 917-6487; fax (425) 917-6590.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the ADDRESSES section. Include Docket No. FAA-2009-0293; Directorate Identifier 2008-NM-221-AD at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD because of those comments.

We will post all comments we receive, without change, to <http://www.regulations.gov>, including any personal information you provide. We will also post a report summarizing each substantive verbal contact we receive about this proposed AD.

Discussion

We have received reports of the inboard trailing edge (TE) flaps blowing back due to the failure of a transmission carbon disk no-back brake. The no-back brake did not hold the TE flaps in the commanded position. On approach, with landing flaps 25 or 30 selected, the inboard TE flaps failed to hold the commanded position and blew back to approximately flaps 10/15. This failure can cause an asymmetric flap blow-back if a torque tube becomes disconnected in combination with a failed no-back brake, or cause a symmetric flap blow-back if the hydraulic motor torque is lost in combination with two failed no-back brakes.

This condition, if not corrected, could result in a decrease of the aerodynamic controllability of the airplane, which could adversely affect the airplane's continued safe flight and landing.

Relevant Service Information

We have reviewed Boeing Special Attention Service Bulletin 747-27-2422, dated October 30, 2008. The service bulletin describes procedures to replace the inboard TE flap transmission carbon disk no-back brakes with skewed roller no-back brakes at the TE flap transmission, positions 4 and 5.

Table-Estimated costs						
Action	Work hours	Average labor rate per hour	Parts	Cost	Number of U.S.-registered airplanes	Fleet cost
Replacement	25	\$80	\$60,670	\$62,670	249	\$15,604,830

FAA's Determination and Requirements of This Proposed AD

We are proposing this AD because we evaluated all relevant information and determined the unsafe condition described previously is likely to exist or develop in other products of these same type designs. This proposed AD would require accomplishing the actions specified in the service information described previously.

Costs of Compliance

We estimate that this proposed AD would affect 249 airplanes of U.S. registry. The following table provides the estimated costs for U.S. operators to comply with this proposed AD.

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, section 106, describes the authority of the FAA Administrator. Subtitle VII: Aviation Programs, describes in more detail the scope of the Agency's authority.

We are issuing this rulemaking under the authority described in Subtitle VII, Part A, Subpart III, Section 44701: General requirements. Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

We determined that this proposed AD would not have federalism implications under Executive Order 13132. This proposed AD would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify this proposed regulation:

1. Is not a significant regulatory action under Executive Order 12866,
2. Is not a significant rule under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979), and
3. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

You can find our regulatory evaluation and the estimated costs of compliance in the AD Docket.

List of Subjects in [14 CFR Part 39](#)

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

The Proposed Amendment

Accordingly, under the authority delegated to me by the Administrator, the FAA proposes to amend [14 CFR part 39](#) as follows:

PART 39-AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority:

49 U.S.C. 106(g), 40113, 44701.

39.13

[Amended]

2. The FAA amends 39.13 by adding the following new AD:

BOEING: Docket No. FAA-2009-0293; Directorate Identifier 2008-NM-221-AD.

Comments Due Date

- (a) We must receive comments by May 18, 2009.

Affected ADs

- (b) None.

Applicability

(c) This AD applies to Boeing Model 747-100, -100B, -100B SUD, -200B, -200C, -200F, -300, -400, -400D, -400F, and 747SR series airplanes, certificated in any category; as identified in Boeing Special Attention Service Bulletin 747-27-2422, dated October 30, 2008.

Subject

(d) Air Transport Association (ATA) of America Code 27: Flight controls.

Unsafe Condition

(e) This AD results from reports of the inboard trailing edge (TE) flaps blowing back due to the failure of a transmission carbon disk no-back brake. The no-back brake did not hold the flaps in the commanded position. The Federal Aviation Administration is issuing this AD to prevent a decrease of the aerodynamic controllability of the airplane, which could adversely affect the airplane's continued safe flight and landing.

Compliance

(f) You are responsible for having the actions required by this AD performed within the compliance times specified, unless the actions have already been done.

Corrective Action

(g) Within 5 years after the effective date of this AD, replace the trailing edge flap transmission no-back brakes with skewed roller no-back brakes at the trailing edge flap transmission, positions 4 and 5, in accordance with Boeing Special Attention Service Bulletin 747-27-2422, dated October 30, 2008.

Alternative Methods of Compliance (AMOCs)

(h)(1) The Manager, Seattle Aircraft Certification Office (ACO), FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in [14 CFR 39.19](#). Send information to ATTN: Douglas Tsuji, Aerospace Engineer, Systems and Equipment Branch, ANM-130S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington

98057-3356; telephone (425) 917-6487; fax (425) 917-6590.

(2) To request a different method of compliance or a different compliance time for this AD, follow the procedures in [14 CFR 39.19](#). Before using any approved AMOC on any airplane to which the AMOC applies, notify your principal maintenance inspector (PMI) or principal avionics inspector (PAI), as appropriate, or lacking a principal inspector, your local Flight Standards District Office. The AMOC approval letter must specifically reference this AD.

Issued in Renton, Washington, on March 18, 2009. Ali Bahrami, Manager, Transport Airplane Directorate, Aircraft Certification Service. [FR Doc. E9-7273 Filed 3-31-09; 8:45 am] BILLING CODE 4910-13-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[14 CFR Part 39](#)

[Docket No. FAA-2009-0292; Directorate Identifier 2008-NM-011-AD]

RIN 2120-AA64

Airworthiness Directives; Airbus Model A300, A310, and A300-600 Series Airplanes

AGENCY:

Federal Aviation Administration (FAA), Department of Transportation (DOT).

ACTION:

Notice of proposed rulemaking (NPRM).

SUMMARY:

The FAA proposes to supersede an existing airworthiness directive (AD) that applies to certain Airbus Model A300 and A310 series airplanes. The existing AD currently requires replacement of the nose landing gear drag strut upper attachment pin. This proposed AD would require revising the Airworthiness Limitations section (ALS) of the Instructions for Continued Airworthiness (ICA) to require additional life limits and/or replacements for certain main landing gear and nose landing gear components, and would also expand the applicability. This proposed AD results from revisions to the ALS of the ICA to include new or more restrictive life limits and/or replacements. We are proposing this AD to ensure the continued structural integrity of these airplanes.

DATES:

We must receive comments on this proposed AD by May 1, 2009.

ADDRESSES:

You may send comments by any of the following methods:

Federal eRulemaking Portal: Go to <http://www.regulations.gov>. Follow the instructions for submitting comments.

Fax: 202-493-2251.

Mail: U.S. Department of Transportation, Docket Operations, M-30, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue, SE., Washington, DC 20590.

Hand Delivery: U.S. Department of Transportation, Docket Operations, M-30, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For service information identified in this proposed AD, contact Airbus SAS-EAW (Airworthiness Office), 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France; telephone +33 5 61 93 36 96; fax +33 5 61 93 44 51; e-mail: account.airworth-eas@airbus.com; Internet: <http://www.airbus.com>. You may review copies of the referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington. For information on the availability of this material at the FAA, call 425-227-1221 or 425-227-1152.

Examining the AD Docket

You may examine the AD docket on the Internet at <http://www.regulations.gov>; or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this proposed AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Office (telephone 800-647-5527) is in the ADDRESSES section. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT:

Tom Stafford, Aerospace Engineer, International Branch, ANM-116, Transport Airplane Directorate, FAA, 1601 Lind Avenue, SW., Renton, Washington

98057-3356; telephone (425) 227-1622; fax (425) 227-1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the ADDRESSES section. Include Docket No. FAA-2009-0292; Directorate Identifier 2008-NM-011-AD at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD because of those comments.

We will post all comments we receive, without change, to <http://www.regulations.gov>, including any personal information you provide. We will also post a report summarizing each substantive verbal contact we receive about this proposed AD.

Discussion

On July 21, 1987, we issued AD 87-16-06, amendment 39-5692 (52 FR 28241, July 29, 1987), for certain Airbus Model A300 and A310 series airplanes. That AD requires replacement of the nose landing gear drag strut upper attachment pin. That AD resulted from reports of pins which were found to be improperly manufactured. We issued that AD to prevent failure of the pin and collapse of the nose landing gear.

Actions Since Existing AD Was Issued

Since we issued AD 87-16-06, the manufacturer has revised the Airworthiness Limitations Section (ALS) of the Instructions for Continued Airworthiness (ICA) to include new or more restrictive life limits and replacements for the main landing gear and the nose landing gear. These new limits affect the replacement of the upper attachment pin for the nose landing gear drag strut that was the subject of AD 87-16-06.

In addition, European Aviation Safety Agency (EASA) Airworthiness Directive 2007-0293, dated November 29, 2007, which is parallel to this proposed AD, includes Model A300-600 series airplanes. Those airplane models were not included in AD 87-16-06.

Estimated Costs						
Action	Work hours	Average labor rate per hour	Parts	Cost perairplane	Number of U.S.-registered airplanes	Fleet cost
Replacement (required by AD 87-16-06)	7	\$80	\$3,300	\$3,860	94	\$362,840
Revision (new proposed action)	1	80	0	80	238	19,040

Relevant Service Information

Airbus has issued the following revisions to the ALS of the ICA. These documents provide each mandatory replacement time, structural inspection interval, and related structural inspection procedures or other procedures (e.g., modifications).

For Model A300 Series Airplanes: Sub-part 1-2: Life Limits, and Sub-part 1-3: Demonstrated fatigue lives of Part 1, Safe Life Airworthiness Limitation Items, dated September 6, 2007.

For Model A300-600 Series Airplanes: Sub-part 1-2: Life Limits, and Sub-part 1-3: Demonstrated fatigue lives of Part 1, Safe Life Airworthiness Limitation Items, dated December 21, 2006.

For Model A310 Series Airplanes: Sub-part 1-2: Life Limits, and Sub-part 1-3: Demonstrated fatigue lives of Part 1, Safe Life Airworthiness Limitation Items, dated December 21, 2006.

Airbus has also issued Section 05-10-00, Revision 28, dated February 27, 1998, of Chapter 5, Service Life Limits and Maintenance Checks, of the A300 Aircraft Maintenance Manual. Section 05-10-00 includes life limit values for the nose and main landing gears. This document is an alternate source for the life limits defined in Part 1, Safe Life Airworthiness Limitation Items, dated September 6, 2007, of the ALS, for Model A300 series airplanes.

Airbus has also issued Service Information Letter (SIL) 32-118, Revision 02, dated October 24, 2007. This SIL gives instructions for calculating the life limit of main or nose landing gear parts where the history of accumulated landings is partial or unknown, or where the history of application details (airplane type, model, weight variant, etc.) is partial or unknown.

Accomplishing the actions specified in the service information is intended to adequately address the unsafe condition. EASA mandated the service information and issued Airworthiness Directive 2007-0292, dated November 29, 2007, to ensure the continued

airworthiness of these airplanes in the European Union.

Other Relevant Rulemaking

On January 11, 1984, we issued AD 84-02-04 (49 FR 2746, January 23, 1984), for certain Airbus Model A300 B2 and B4 series airplanes. That AD requires inspection of main landing gear hinge arms for corrosion and cracks, and repair or modifications if needed. That AD also requires replacement of the main landing gear shock absorber sliding rod attachment fitting. That AD resulted from corrosion and cracks found on these components. We issued that AD to prevent landing gear failure.

The actions specified in paragraph (h) of this proposed AD would satisfy the requirements of paragraph A. of AD 84-02-04. There are no actions in this proposed AD that would satisfy the requirements of paragraphs B. and C. of AD 84-02-04.

FAA's Determination and Requirements of the Proposed AD

This product has been approved by the aviation authority of another country, and is approved for operation in the United States. Pursuant to our bilateral agreement with the State of Design Authority, we have been notified of the unsafe condition described in the MCAI and service information referenced above. We are proposing this AD because we evaluated all pertinent information and determined an unsafe condition exists and is likely to exist or develop on other products of the same type design.

This proposed AD would supersede AD 87-16-06 and would retain the requirements of that existing AD. This proposed AD would also add airplanes to the applicability and require revising the ALS of the ICA to incorporate additional life limits and/or structural inspections for certain main landing gear and nose landing gear components.

Change to Existing AD

This proposed AD would retain the requirements of AD 87-16-06. Since AD 87-16-06 was issued, the AD format has been revised. As a result, the corresponding paragraph identifiers have changed in this proposed AD, and paragraph (g) of this proposed AD corresponds to paragraph A. of AD 87-16-06.

Costs of Compliance

The following table provides the estimated costs for U.S. operators to comply with this proposed AD.

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, Section 106, describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the Agency's authority.

We are issuing this rulemaking under the authority described in Subtitle VII, Part A, Subpart III, Section 44701, General requirements. Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

We have determined that this proposed AD would not have federalism implications under Executive Order 13132. This proposed AD would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify that the proposed regulation:

Table 1-Parts Subject to the Life Limits Specified in the Document Identified in Paragraph (h)(1)(ii) of This AD

Part Number (P/N)	Part name
P/N C61643-2, P/N C61643-4, P/N C61643-5	Main landing gear (MLG) shock absorber end fitting.
P/N A32210001205xx	Nose landing gear (NLG) pintle pin.
P/N C62037-1	NLG shock absorber bottom.
P/N 196-0328-501	Cross beam (Pratt Whitney forward engine mount).

1. Is not a significant regulatory action under Executive Order 12866;

2. Is not a significant rule under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and

3. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

We prepared a regulatory evaluation of the estimated costs to comply with this proposed AD and placed it in the AD docket. See the ADDRESSES section for a location to examine the regulatory evaluation.

List of Subjects in [14 CFR Part 39](#)

Air transportation, Aircraft, Aviation safety, Incorporation by Reference, Safety.

The Proposed Amendment

Accordingly, under the authority delegated to me by the Administrator, the FAA proposes to amend [14 CFR part 39](#) as follows:

PART 39-AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority:

49 U.S.C. 106(g), 40113, 44701.

39.13

[Amended]

2. The Federal Aviation Administration (FAA) amends 39.13 by removing amendment 39-5692 (52 FR 28241, July 29, 1987) and adding the following new airworthiness directive (AD):

AIRBUS: Docket No. FAA-2009-0292; Directorate Identifier 2008-NM-011-AD.

Comments Due Date

(a) The FAA must receive comments on this AD action by May 1, 2009.

Affected ADs

(b) This AD supersedes AD 87-16-06.

Applicability

(c) This AD applies to all Airbus Model A300, A310, and A300-600 series airplanes, certificated in any category.

Subject

(d) Air Transport Association (ATA) of America Code 32: Landing Gear.

Unsafe Condition

(e) This AD results from revisions to the Airworthiness Limitations section (ALS) of the Instructions for Continued Airworthiness (ICA) to include new or more restrictive life limits and/or replacements. We are issuing this AD to ensure the continued structural integrity of these airplanes.

Compliance

(f) You are responsible for having the actions required by this AD performed within the compliance times specified, unless the actions have already been done.

Note 1:

This AD requires revisions to certain operator maintenance documents to include new replacements. Compliance with these inspections is required by [14 CFR 91.403\(c\)](#). For airplanes that have been previously modified, altered, or repaired in the areas addressed by these replacements, the operator may not be able to accomplish the replacements described in the revisions. In this situation, to comply with [14 CFR 91.403\(c\)](#), the operator must request approval for an alternative method of compliance according to paragraph (l) of this AD. The request should include a description of changes to the required replacements that will ensure the continued operational safety of the airplane.

Restatement of the Requirements of AD 87-16-06

(g) *For Model A300 and A310 Series Airplanes:* Prior to the accumulation of 16,000 landings, or within the next 2,000 landings after September 3, 1987 (the effective date of AD 87-16-06), whichever occurs later, replace the nose landing gear drag strut upper attachment pin in accordance with Airbus Service Bulletin A300-32-374, Revision 1, dated July 15, 1986 (applicable to Model A300 airplanes); or A310-32-2023, Revision 2, dated November 14, 1986 (applicable to Model A310 airplanes).

New Requirements of This AD

ALS Revision

(h) *For Model A300, A310, and A300-600 Series Airplanes:* Within 3 months after the effective date of this AD, revise the ALS of the ICA to incorporate the applicable document listed in paragraph (h)(1), (h)(2), or (h)(3) of this AD. Accomplishing the actions specified in the applicable document satisfies the requirements of paragraph A. of AD 84-02-04, amendment 39-4795.

(1) *For Model A300 Series Airplanes:* Incorporate the document listed in paragraph (h)(1)(i) or (h)(1)(ii) of this AD.

(i) Section 05-10-00, Revision 28, dated February 27, 1998, of Chapter 5, Service Life Limits and Maintenance Checks, of the Airbus A300 Aircraft Maintenance Manual, except that the parts listed in Table 1 of this AD are subject to the life limits defined in the document listed in paragraph (h)(1)(ii) of this AD.

(ii) Sub-part 1-2: Life Limits, and Sub-part 1-3: Demonstrated fatigue lives of Part 1, Safe Life Airworthiness Limitation Items, dated September 6, 2007, of the Airbus A300 ALS.

(2) *For Model A310 Series Airplanes:* Incorporate Sub-part 1-2: Life Limits, and Sub-part 1-3: Demonstrated fatigue lives of Part 1, Safe Life Airworthiness Limitation

Items, dated December 21, 2006, of the Airbus A310 ALS.

(3) For Model A300-600 Series Airplanes: Incorporate Sub-part 1-2: Life Limits, and Sub-part 1-3: Demonstrated fatigue lives of Part 1, Safe Life Airworthiness Limitation Items, dated December 21, 2006, of the Airbus A300-600 ALS.

Initial Compliance Times and Repetitive Inspections

(i) Do the replacement at the applicable time specified in paragraph (i)(1) or (i)(2) of this AD, except as provided by paragraph (j) of this AD. The replacement must be done thereafter within the interval specified in the applicable document identified in paragraph (h)(1), (h)(2), or (h)(3) of this AD.

(1) For any life limitation/task that has been complied with before the effective date of this AD in accordance with the applicable document listed in paragraph (h)(1), (h)(2), or (h)(3) of this AD, or in accordance with paragraph (g) of this AD, use the last accomplishment of each limitation/task as a starting point for accomplishing each corresponding limitation/task required by this AD.

(2) For any life limitation/task that has not been complied with before the effective date of this AD in accordance with the applicable document listed in paragraphs (h)(1), (h)(2), and (h)(3) of this AD, or in accordance with paragraph (g) of this AD, the initial compliance time starts from the date of initial entry into service as defined in the applicable document.

Special Compliance Times

(j) For any airplane on which the history of accumulated landings is partial or unknown, or where the history of application details (airplane type, model, weight variant, etc.) is partial or unknown, with or without using the information in Airbus Service Information Letter 32-118, Revision 02, dated October 24, 2007: Parts listed in Figure 1 of this AD must be replaced at the associated compliance time. The replacement must be done thereafter at the interval specified in the applicable document(s) specified in paragraphs (h)(1), (h)(2), and (h)(3) of this AD.

BILLING CODE 4910-13-P EP01AP09.004
EP01AP09.005 EP01AP09.006
EP01AP09.007 EP01AP09.008

Alternative Intervals or Limits

(k) Except as provided by paragraph (l) of this AD, after accomplishing the actions specified in paragraphs (h), (i), and (j) of this AD, no alternative replacements, replacement intervals, or limitations may be used.

Alternative Methods of Compliance (AMOCs)

(l)(1) The Manager, Manager, ANM-116, International Branch, Transport Airplane Directorate, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in [14 CFR 39.19](#). Send information to ATTN: Tom Stafford, Aerospace Engineer, International Branch, ANM-116, Transport Airplane Directorate, FAA, 1601 Lind Avenue, SW., Renton, Washington 98057-3356; telephone (425) 227-1622; fax (425) 227-1149.

(2) To request a different method of compliance or a different compliance time for this AD, follow the procedures in [14 CFR 39.19](#). Before using any approved AMOC on any airplane to which the AMOC applies, notify your principal maintenance inspector (PMI) or principal avionics inspector (PAI), as appropriate, or lacking a principal inspector, your local Flight Standards District Office. The AMOC approval letter must specifically reference this AD.

Related Information

(m) European Aviation Safety Agency (EASA) Airworthiness Directive 2007-0293, dated November 29, 2007, also addresses the subject of this AD.

Issued in Renton, Washington, on March 12, 2009. Ali Bahrami, Manager, Transport Airplane Directorate, Aircraft Certification Service. [FR Doc. E9-7267 Filed 3-31-09; 8:45 am] BILLING CODE 4910-13-C

ENVIRONMENTAL PROTECTION AGENCY

[40 CFR Part 52](#)

[EPA-R06-OAR-2008-0509; FRL-8788-7]

Approval and Promulgation of Implementation Plans; New Mexico; Albuquerque/Bernalillo County

AGENCY:

Environmental Protection Agency (EPA).

ACTION:

Proposed rule.

SUMMARY:

EPA is proposing to approve a revision to the New Mexico Albuquerque/Bernalillo County State Implementation Plan (SIP). This revision replaces Regulation 8, Airborne Particulate Matter, with NMAC 20.11.20, Fugitive Dust Control. This rulemaking action is being taken under section 110 of the Clean Air Act (CAA).

DATES:

Written comments must be received on or before May 1, 2009.

ADDRESSES:

Comments may be mailed to Mr. Guy Donaldson, Chief, Air Planning Section (6PD-L), Environmental Protection Agency, 1445 Ross Avenue, Suite 1200, Dallas, Texas 75202-2733. Comments may also be submitted electronically or through hand delivery/courier by following the detailed instructions in the Addresses section of the direct final rule located in the rules section of this FEDERAL REGISTER.

FOR FURTHER INFORMATION CONTACT:

Joe Kordzi, Air Planning Section (6PD-L), Environmental Protection Agency, Region 6, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202-2733, telephone (214) 665-7186; fax number 214-665-7263; e-mail address kordzi.joe@epa.gov.

SUPPLEMENTARY INFORMATION:

In the final rules section of this FEDERAL REGISTER, EPA is approving the State's SIP submittal as a direct final rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this action rule, no further activity is contemplated. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time. Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from

the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment.

For additional information, see the direct final rule which is located in the rules section of this FEDERAL REGISTER .

Dated: March 16, 2009. Lawrence E. Starfield, Acting Regional Administrator, Region 6. [FR Doc. E9-7297 Filed 3-31-09; 8:45 am] BILLING CODE 6560-50-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 090211163-9167-01]

RIN 0648-AX69

Fisheries of the Northeastern United States; Recreational Management Measures for the Summer Flounder, Scup, and Black Sea Bass Fisheries; Fishing Year 2009

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 2009 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 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 1, 2009.

ADDRESSES:

You may submit comments, identified by RIN 0648-AX69, by any one of the following methods:

Electronic Submissions: Submit all electronic public comments via the Federal eRulemaking Portal <http://www.regulations.gov>.

Mail and hand delivery: Patricia A. Kurkul, Regional Administrator, NMFS, Northeast Regional Office, 55 Great Republic Drive, Gloucester, MA 01930. Mark the outside of the envelope: Comments on 2009 Summer Flounder, Scup, and Black Sea Bass Recreational Measures.

Fax: (978) 281-9135. Send the fax to the attention of the Sustainable Fisheries Division. Include Comments on 2009 Summer Flounder, Scup, and Black Sea Bass Recreational Measures prominently on the fax.

Instructions: All comments received are a part of the public record and will generally be posted to <http://www.regulations.gov> without change. All Personal Identifying Information (for example, name, address, etc.) voluntarily submitted by the commenter may be publicly accessible. Do not submit Confidential Business Information or otherwise sensitive or protected information.

NMFS will accept anonymous comments. Attachments to electronic comments will be accepted in Microsoft Word, Excel, WordPerfect, or Adobe PDF file formats only.

Copies of the recreational management measures document, including the Environmental Assessment, Regulatory Impact Review, and Initial Regulatory Flexibility Analysis (EA/RIR/IRFA) and other supporting documents for the recreational management measures are available from Daniel Furlong, Executive Director, Mid-Atlantic Fishery Management Council, Room 2115, Federal Building, 300 South New Street, Dover, DE 19901-6790. These documents are also accessible via the Internet at <http://www.nero.noaa.gov>.

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 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 (NC) 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 3513.3° N. lat. (the latitude of Cape Hatteras Lighthouse, Buxton, NC) northward to the U.S./Canada border.

The Council prepared the FMP under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), 16 U.S.C. 1801 *et seq.* Regulations implementing the FMP appear at [50 CFR part 648](#), subparts A (general provisions), G (summer flounder), H (scup), and I (black sea bass). General regulations governing U.S. fisheries also appear at [50 CFR part 600](#). States manage summer flounder 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 FMP established Monitoring Committees (Committees) for the three fisheries, consisting of representatives from the Commission, the Mid-Atlantic Council, state marine fishery agency representatives from MA to NC, and NMFS. The FMP and its implementing regulations require the Committees to review scientific and other relevant information annually and to recommend management measures necessary to achieve the recreational harvest limits established for the summer flounder, scup, and black sea bass fisheries for the upcoming fishing year. The FMP limits these measures to minimum fish size, 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 Committees' recommendations and any public comment in making their recommendations to the Council and the Commission, respectively. The Council then 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.

Quota specifications for the 2009 summer flounder, scup, and black sea bass fisheries were published on January 2, 2009 (74 FR 29). Based on these specifications, the 2009 coastwide recreational harvest limits are 7,158,600 lb (3,247 mt) for summer flounder, 2,585,952 lb (1,173 mt) for scup, and 1,137,810 lb (516 mt) for black sea bass. The specification rules did not establish recreational measures, since final recreational catch data for 2008 were not available when the Council made its recreational harvest limit recommendation to NMFS.

All minimum fish sizes discussed hereafter 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.

Summer Flounder

Recreational landings for 2008 were estimated to have been 8.14 million lb (3,692 mt). This exceeded, by approximately 31 percent, the 2008 recreational harvest limit of 6.22 million lb (2,821 mt). All states except DE, VA, and NC are projected to have exceeded their state harvest limits established under the conservation equivalency system utilized to manage the 2008 recreational summer flounder fishery. The magnitude of the overages ranged from a low of 9 percent for NJ to a high of 105 percent for MD.

The 2009 coastwide harvest limit is 7.16 million lb (3,247 mt), a 15.1-percent increase from the 2008 harvest limit of 6.22 million lb (2,821 mt). However, given the magnitude of the 2008 overages, landings must be reduced by 12 percent coastwide from the 2008 levels to ensure that the 2009 harvest limit is not exceeded. The Council is recommending conservation equivalency, described as follows, that would require individual states to reduce summer flounder landings (measured in number of fish) to achieve the necessary recreational harvest reductions for 2009.

NMFS implemented Framework Adjustment 2 to the FMP (Framework Adjustment 2) on July 29, 2001 (66 FR 36208), which established a process that makes conservation equivalency an option for the summer flounder recreational fishery. Conservation equivalency allows each state to establish its own recreational management measures (possession limits, minimum fish size, and fishing seasons) to achieve its state 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 developed to achieve the overall recreational harvest limit, if implemented by all of the states.

The Council and Board recommend annually that either state-specific recreational measures be developed (conservation equivalency) or coastwide management measures be implemented by all states 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.

If conservation equivalency is recommended, and following confirmation that the proposed state measures would achieve conservation equivalency, NMFS may waive the permit condition found at 648.4(b), which requires federally permitted vessels to comply with the more restrictive management measures when state and Federal measures differ. In such a situation, federally permitted charter/party permit holders and recreational vessels 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. 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 (Technical Committee), or that submits measures that are determined not to achieve the required level of reduction for that state. The precautionary default measures are defined as the set of measures that would achieve at least the highest percent reduction for any state on a coastwide basis.

In December 2008, the Council and Board voted to recommend conservation equivalency to achieve the 2009 recreational harvest limit. The Commission's conservation equivalency guidelines require the states to determine and implement appropriate state-specific management measures (i.e., possession limits, fish size limits, and fishing seasons) to achieve state-specific harvest limits. States may also form voluntary regions wherein the member states' measures must achieve the overall reduction required for the region in question.

For 2009, the Commission is requiring that states that must reduce landings to ensure that at least 50 percent of the percent reduction derive from a modification to the fishing season. The Monitoring Committee and the Technical Committee have both stated that modification of season length is typically more effective at reducing landings than are modifications to minimum fish size and possession limits. The Commission is not requiring the use of any other adjustments or reductions similar to the performance-based adjustment factor that was utilized in 2008.

According to the conservation equivalency procedures established in Framework Adjustment 2, each state except DE, VA, and NC would be required to reduce 2009 landings by the percentages shown in Table 1. DE, VA, and NC may submit more liberal management measures, provided that they are sufficient to ensure their 2009 state harvest limits are not exceeded. ME and NH have no recreational summer flounder harvest limit and are not required to submit management measures to the Commission.

Under conservation equivalency, state-specific landings from 1998 are used as the baseline for individual state's reductions, because 1998 was the last year that recreational summer regulations were consistent along the coast. Recreational landings in 1998 were 6.978 million fish coastwide; the 2009 recreational harvest limit translates into 2.069 million fish (i.e., 7.16 million lb (3,247 mt) recreational harvest limit divided by predicted 2009 average fish weight of 3.46 lb/fish (1.57 kg/fish)). As such, landings must be reduced by 70.4 percent in 2009 to achieve the 1998 baseline level of landings.

A Based on a 70.4-percent reduction in 1998 landings and an estimated 2009 mean fish weight of 3.46 lb (1.57 kg)

The Board required that each state submit its conservation equivalency proposals to the Commission by late January 2009. The Technical Committee then evaluated the proposals and advised the Board of each proposal's consistency with respect to achieving the coastwide recreational harvest limit. The Commission invited public participation in its review process by allowing public comment on the state proposals at the Technical Committee meeting held on January 28, 2009. The Board met on February 3, 2009, and approved a range of management proposals for each state designed to attain conservation equivalency. Once the states select and submit their final summer flounder

Table 1. 2009 Conservation Equivalency State-Specific Harvest Targets (thousands of fish): 1998 Baseline; 2009 Target, 2008 Projected Landings, and Percent Reductions.

State	1998 Baseline Target (X '000 fish)	2009 Target (X '000 fish) A	2008 Projected Landings(X '000 fish)	Required Percent Reduction for 2009
MA	383	114	150	24
RI	395	117	200	42
CT	261	77	118	35
NY	1,230	365	600	39
NJ	2,728	809	870	7
DE	219	65	33	0
MD	206	61	125	51
VA	1,165	345	231	0
NC	391	116	54	0

management measures to the Commission, the Commission will notify NMFS as to which individual state proposals have been approved or disapproved. NMFS retains the final authority either to approve or to disapprove using conservation equivalency in place of the coastwide measures and will publish its determination as a final rule in the FEDERAL REGISTER to establish the 2009 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 suite of state proposals for 2009 has initially been approved by the Commission. Therefore, a state would only be required to implement precautionary default measures if the measures submitted for final Commission approval are different than those preliminarily approved by the Commission or for failing to finalize conservation equivalent measures for 2009.

The precautionary default measures recommended by the Council and Board during their joint December 2008 meeting are for a 21.5-inch (54.61-cm) minimum fish size, a possession limit of one fish, and an open season of July 4 through September 7, 2009.

As described above, for each fishing year, NMFS implements either coastwide measures or conservation equivalent measures at the final rule stage. The coastwide measures recommended by the Council and Board for 2009 are a 20-inch (50.80-cm) minimum fish

size, a possession limit of two fish, and an open season from May 1 to September 30, 2009.

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 disapproved by the Commission. NMFS proposes the non-preferred alternative of coastwide measures, as previously described, for use if conservation equivalency is not approved in the final rule. The coastwide measures would be waived if conservation equivalency is approved in the final rule.

Scup

The 2009 scup recreational harvest limit is 2,585,952 lb (1,173 mt), a 41-percent increase from the 2008 recreational harvest limit of 1.83 million lb (830 mt). Recreational landings are estimated to have been 4.75 million lb (2,155 mt).

Development of scup recreational management measures has been substantially complicated for 2009 following the results of a Northeast Fisheries Science Center (Center) Data Poor Stocks Working Group (DPSWG). The peer-reviewed results of the DPSWG has resulted in the adoption of revised scup biological reference points, a new stock assessment modeling approach, and a more favorable overall status of the stock than was previously available. In fact, the scup stock is now considered rebuilt, not overfished, and not subject to overfishing in 2007, the year for which the most recent information was available during the DPSWG.

The Council and Commission, at the time of their December 9-11, 2008, meeting, did not have the final DPSWG results; these were not

available until January 20, 2009. As such, the Council and Commission adopted recommendations for scup measures based on the proposed 2009 scup TAL and recreational harvest limit as outlined in the October 28, 2008, proposed rule (73 FR 63934) issued by NMFS. This was a TAL of 7.34 million lb (3,329 mt) and a recreational harvest limit of 1.83 million lb (830 mt). This would have required a 63-percent reduction in scup landings for 2009.

The DPSWG peer-review was concluded December 12, 2008. The peer-review panel recommended during the meeting proceedings that the new modeling approach, biological reference points, and revised stock status be accepted for management advice for scup, provided sufficient attention was paid to the many uncertainties remaining in the new assessment. On the strength of this recommendation, NMFS increased the scup TAL from the 7.34 million lb (3,329 mt) proposed in October, to an 11.18-million-lb (4,170-mt) scup TAL in the final rule for the 2009 specifications. This increased the recreational harvest limit from 1.83 million lb (830 mt) to 2.59 million lb (1,173 mt). However, the Council was unable to revisit its recommendation, so the preferred measures proposed by the Council include a 12-inch (30.48-cm) minimum fish size, a January 1-February 28 and October 1-October 31, 2009, fishing season, and a 25-fish possession limit. The non-preferred alternatives offered by the Council were to retain *status quo* measures from 2008 or to close the Federal waters of the EEZ for 2009.

On February 3, 2009, the Commission's Scup Management Board (Board) elected to maintain status quo scup management measures from 2008 for state waters in 2009. Under this system, the states from MA to NY, which typically account for 95 to 97 percent

of state water scup harvest, would have similar measures: Different minimum fish sizes; possession limits; and fishing seasons for private vessels/shore based anglers and party/charter vessels. A minimum fish size of 10.5 inches (26.7 cm), a common possession limit (10 fish), and a May 24 through September 26 fishing season for private vessels and shore-based anglers; party and charter vessels could take scup for up to 126 days under two distinct seasons with separate minimum fish sizes, possession limits, and seasons. One charter/party season, designated as bonus fishery, has a minimum fish size of 11.0 inches (27.94 cm), a 45-fish possession limit, and is constrained to a 45-day period within May 15 through October 15. The second party/charter season designation is the non-bonus fishery, which carries an 11.0-inch (27.94-cm) minimum fish size, a 10-fish possession limit, and is 81 days in duration either prior to or following the dates of the open season. Due to low scup landings in NJ through NC, the Board approved the retention of *status quo* management measures for those states, i.e., a 10-inch (25.40-cm) minimum fish size, a 50-fish possession limit, and open seasons of January 1 through February 29 and September 18 through November 30.

Very little of the scup recreational harvest comes from the Federal waters of the EEZ. The average total scup recreational harvest from Federal waters for the years 1998-2007 is slightly over 6 percent. In 2007, the percentage was slightly over 2 percent. NMFS is proposing to implement the Council's non-preferred alternative of status quo for the 2009 fishing year: A 10.5-inch (26.67-cm) minimum fish size; a 15-fish per person possession limit; and open seasons of January 1 through February 28, and October 1 through October 31, 2009. While these measures may result in a minor increase in 2009 scup recreational landings, the majority of landings will occur from state waters where NMFS has no jurisdiction. The state or Federal combined recreational landings are not likely to result in the scup stock being overfished or to result in overfishing.

Black Sea Bass

Recreational landings in 2008 were estimated to have been 1.27 million lb (576 mt)--40 percent below the 2008 target of 2.11 million lb (957 mt) but 10.5 percent above the 2009 target of 1.137 million lb (516 mt). The 2009 recreational harvest limit of 1.137 million lb (516 mt) is a 46.1-percent decrease from the 2008 target. Based on 2008 estimated landings, a 10-percent reduction in coastwide

landings is necessary to achieve the 2009 target.

For Federal waters, the Council and Board have recommended measures that would increase the 12.0-inch (30.48-cm) minimum fish size from 2008 to 12.5 inches (31.75 cm) in 2009 and maintain the status quo 25-fish possession limit and open season of January 1 through December 31, 2009. NMFS proposes to implement the Council and Board recommended measures, which are expected to constrain recreational black sea bass landings to the 2009 target.

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.

An IRFA was prepared, as required by section 603 of the Regulatory Flexibility Act (RFA). The IRFA describes the economic impact this proposed rule, if adopted, would have on small entities. A description of the action, why it is being considered, and the legal basis for this action are contained at the beginning of this section of the preamble and in the SUMMARY. A summary of the analysis follows. A copy of the complete IRFA is available from the Council (see ADDRESSES).

This proposed rule does not duplicate, overlap, or conflict with other Federal rules.

The proposed action could affect any recreational angler who fishes for summer flounder, scup, or black sea bass in the EEZ or on a party/charter vessel issued a Federal permit for summer flounder, scup, and/or black sea bass. However, the IRFA focuses upon the impacts on party/charter vessels issued a Federal permit for summer flounder, scup, and/or black sea bass, because these vessels are considered small entities for the purposes of the RFA, i.e., businesses in the recreational fishery with gross revenues of up to \$6.5 million. These small entities can be specifically identified in the Federal vessel permit database and would be impacted by the recreational measures, regardless of whether they fish in Federal or state waters. Although

individual recreational anglers are likely to be impacted, they are not considered small entities under the RFA. Also, there is no permit requirement to participate in these fisheries; thus, it would be difficult to quantify any impacts on recreational anglers in general.

The Council estimated that the proposed measures could affect any of the 962 vessels possessing a Federal charter/party permit for summer flounder, scup, and/or black sea bass in 2007, the most recent year for which complete permit data are available. However, only 342 of these vessels reported active participation in the recreational summer flounder, scup, and/or black sea bass fisheries in 2007.

In the IRFA, the no-action alternative (i.e., maintenance of the regulations as codified) is defined as implementation of the following: (1) For summer flounder, coastwide measures of a 20-inch (50.8-cm) minimum fish size, a 2-fish possession limit, and a season from May 1 through September 30, i.e., the Federal regulatory measure that would be implemented if conservation equivalency is not implemented in the final rule; (2) for scup, a 10.5-inch (26.67-cm) minimum fish size, a 15-fish possession limit, and open seasons of January 1 through February 28, and October 1 through October 31; and (3) for black sea bass, a 12-inch (30.48-cm) minimum size, a 25-fish possession limit, and an open season of January 1 through December 31.

The no-action alternative for scup is the same (*status quo*) set of measures being proposed for 2009. As such, since there is no regulatory change being proposed for scup, there is no further discussion of the economic impacts within this section.

The impacts of the proposed action on small entities (i.e., federally permitted party/charter vessels in each state in the Northeast region) was analyzed, assessing potential changes in gross revenues for all 18 combinations of alternatives proposed. Although NMFS's RFA guidance recommends assessing changes in profitability as a result of proposed measures, the quantitative impacts were instead evaluated using changes in party/charter vessel revenues as a proxy for profitability. This is because reliable cost and revenue information is not available for charter/party vessels at this time. Without reliable cost and revenue data, profits cannot be discriminated from gross revenues. As reliable cost data become available, impacts to profitability can be more accurately forecast. Similarly, changes to long-term solvency were not assessed due both to the absence of cost data

and because the recreational management measures change annually according to the specification-setting process. Effects of the various management measures were analyzed by employing quantitative approaches, to the extent possible. Where quantitative data were not available, qualitative analyses were utilized. Management measures proposed under the summer flounder conservation equivalency alternative (Summer Flounder Alternative 1) have yet to be adopted; therefore, potential losses under this alternative could not be analyzed in conjunction with various alternatives proposed for scup and black sea bass. Since conservation equivalency allows each state to tailor specific recreational fishing measures to the needs of that state, while still achieving conservation goals, it is likely that the measures developed under this alternative, when considered in combination with the measures proposed for scup and black sea bass, would have fewer overall adverse effects than any of the other combinations that were analyzed.

Impacts for other combinations of alternatives were examined by first estimating the number of angler trips aboard party/charter vessels in each state in 2008 that would have been affected by the proposed 2009 management measures. All 2008 party/charter fishing trips that would have been constrained by the proposed 2009 measures in each state were considered to be affected trips. MRFSS data indicate that anglers took 37.49 million fishing trips in 2008 in the Northeastern U.S., and that party/charter anglers accounted for 5 percent of the angler fishing trips, private/rental boat trips accounted for 51 percent of angler fishing trips, and shore trips accounted for 44 percent of recreational angler fishing trips. The number of party/charter trips in each state ranged from 36,566 in DE to 335,740 in NJ (excluding ME and NH).

There is very little empirical evidence available to estimate how the party/charter vessel anglers might be affected by the proposed fishing regulations. If the proposed measures discourage trip-taking behavior among some of the affected anglers, economic losses may accrue to the party/charter vessel industry in the form of reduced access fees. On the other hand, if the proposed measures do not have a negative impact on the value or satisfaction the affected anglers derive from their fishing trips, party/charter revenues would remain unaffected by this action. In an attempt to estimate the potential changes in gross revenues to the party/charter vessel industry in each state, two hypothetical scenarios were considered: A 25-percent

reduction, and a 50-percent reduction, in the number of fishing trips that are predicted to be affected by implementation of the management measures in the Northeast (ME through NC) in 2009.

Total economic losses to party/charter vessels were then estimated by multiplying the number of potentially affected trips in each state in 2009, under the two hypothetical scenarios, by the estimated average access fee of \$60.861 paid by party/charter anglers in the Northeast in 2007. Finally, total economic losses were divided by the number of federally permitted party/charter vessels that participated in the summer flounder fisheries in 2007 in each state (according to homeport state in the Northeast Region Permit Database) to obtain an estimate of the average projected gross revenue loss per party/charter vessel in 2009. The analysis assumed that angler effort and catch rates in 2009 will be similar to 2008.

1 2006 party/charter average expenditure estimate of \$57.76 adjusted to 2008 equivalent using Bureau of Labor's Consumer Price Index.

The Council noted that this method is likely to overestimate the potential revenue losses that would result from implementation of the proposed measures in these three fisheries for several reasons. First, the analysis likely overestimates the potential revenue impacts of these measures because some anglers would continue to take party/charter vessel trips, even if the restrictions limit their landings. Also, some anglers may engage in catch and release fishing and/or target other species. It was not possible to estimate the sensitivity of anglers to specific management measures. Second, the universe of party/charter vessels that participate in the fisheries is likely to be even larger than presented in these analyses, as party/charter vessels that do not possess a Federal summer flounder, scup, or black sea bass permit because they fish only in state waters are not represented in the analyses. Considering the large proportion of landings from state waters (e.g., more than 90 percent of summer flounder and 94 percent of scup landings in 2007, respectively), it is probable that some party/charter vessels fish only in state waters and, thus, do not hold Federal permits for these fisheries. Third, economic losses are estimated under two hypothetical scenarios: (1) A 25-percent and (2) a 50-percent reduction in the number of fishing trips that are predicted to be affected by implementation of the management measures in the Northeast in 2009. Reductions in fishing effort of this magnitude in 2009 are

not likely to occur, given the fact that the proposed measures do not prohibit anglers from keeping at least some of the fish they catch, or the fact that there are alternative species to harvest. Again, it is likely that at least some of the potentially affected anglers would not reduce their effort when faced with the proposed landings restrictions, thereby contributing to the potential overestimation of potential impacts for 2009.

Impacts of Summer Flounder Alternatives

The proposed action for the summer flounder recreational fishery would limit coastwide catch to 7.16 million lb (3,247 mt) by imposing coastwide Federal measures throughout the EEZ. As described earlier, upon confirmation that the proposed state measures would achieve conservation equivalency, NMFS may waive the permit condition found at 648.4(b), which requires federally permitted vessels to comply with the more restrictive management measures when state and Federal measures differ. Federally permitted charter/party permit holders and recreational vessels fishing for summer flounder in the EEZ then would be subject to the recreational fishing measures implemented by the state in which they land summer flounder, rather than the coastwide measures.

The impact of the proposed summer flounder conservation equivalency alternative (in Summer Flounder Alternative 1) among states is likely to be similar to the level of landings reductions that are required of each state. As indicated above, each state except DE, VA, and NC would be required to reduce summer flounder landings in 2009, relative to state 2008 landings, by the percentages shown in Table 1 of the preamble of this proposed rule. 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 adverse economic impacts, to the extent practicable, yet achieves the biological objectives of the FMP. Because states have a choice, it is expected that the states would adopt conservation equivalent measures that result in fewer adverse economic impacts than the more restrictive Commission adopted, NMFS proposed precautionary default measures (i.e., 21.5-inch (54.61-cm) minimum fish size, a possession limit of one fish, and an open season of July 4 through September 7). Under the precautionary default measures, impacted trips are defined as trips taken in 2008 that landed at least one summer flounder smaller than 21.5 inches (54.61 cm) or landed summer

flounder during closed seasons. The analysis concluded that implementation of precautionary default measures could affect 3.0 percent of the party/charter vessel trips in the Northeast, including those trips where no summer flounder were caught.

The impacts of the NMFS proposed summer flounder coastwide alternative, i.e., a 20-inch (50.80-cm) minimum fish size, a two-fish possession limit, and a fishing season from May 1 through September 30, were evaluated using the quantitative method described above. Impacted trips were defined as individual angler trips taken aboard party/charter vessels in 2008 that landed at least one summer flounder smaller than 20 inches (50.80 cm), that landed more than two summer flounder, or landed summer flounder during closed seasons. The analysis concluded that the measures would affect 0.69 percent of the party/charter vessel trips in the Northeast, including those trips where no summer flounder were caught.

Continuation of the current regulatory summer flounder coastwide management measures (i.e., a 19-inch (48.26-cm) minimum fish size, two-fish possession limit, and a May 23 through September 1 fishing season) is not expected to constrain 2009 landings to the recreational harvest limit; therefore, continuation of those measures would be inconsistent with the summer flounder rebuilding program, the FMP, and the Magnuson-Stevens Act.

Impacts of Black Sea Bass Alternatives

The proposed action for the black sea bass recreational fishery would limit coastwide catch to 1.14 million lb (516 mt) by imposing coastwide Federal measures throughout the EEZ. The impact of the Council and Commission preferred black sea bass alternative (Black Sea Bass Alternative 1; a 12.5-inch (31.75-cm) minimum fish size, a 25-fish per person possession limit, and an open season of January 1-December 31, 2009) would reduce black sea bass landings by 12 percent in 2009 from 2008 levels. Impacted trips were defined as trips taken in 2008 that landed at least one black sea bass smaller than 12.5 inches (31.75 cm) or landed more than 25 black sea bass. Analysis concluded that 0.52 percent of federally permitted party/charter vessel trips could be impacted by this alternative.

The impacts of the non-preferred black sea bass coastwide alternative for status quo (Black Sea Bass Alternative 2; 12.0-inch

(30.87-cm) minimum fish size, 25-fish per person possession limit, and no closed season) is not expected to constrain 2009 landings to the recreational harvest limit; therefore, continuation of those measures in Federal waters would be inconsistent with the FMP and the Magnuson-Stevens Act.

Black Sea Bass Alternative 3, (a 12.0-inch (30.87-cm) minimum fish size, 25-fish per person possession limit, and closed fishing season from May 16-June 14, 2009) would reduce landings by 13.3 percent. This is the most restrictive alternative analyzed by the Council. Implementation of this alternative would result in a greater reduction than is required for the 2009 recreational black sea bass fishery.

Regionally, projected federally permitted party/charter revenue losses in 2009 range from \$1.20 million to \$5.72 million in sales, \$440,000 to \$1.94 million in income, and between 38 and 192 jobs, if a 25-percent reduction in the number of affected trips occurs. The estimated losses are approximately twice as high if a 50-percent reduction in affected trips is assumed to occur.

Potential revenue losses in 2009 could differ for federally permitted party/charter vessels that land more than one of the regulated species. The cumulative maximum gross revenue loss per vessel varies by the combination of permits held and by state. All 18 potential combinations of management alternatives for summer flounder, scup, and black sea bass are predicted to affect party/charter vessel revenues to some extent in all of the northeastern coastal states. Although potential losses were estimated for party/charter vessels operating out of ME and NH, these results are suppressed for confidentiality purposes. Average party/charter losses for federally permitted vessels operating in the remaining states are estimated to vary across the 18 combinations of alternatives. For example, in MD, average losses are predicted to range from a high of \$7,068 per vessel to a low of \$1,860 per vessel, assuming a 25-percent reduction in effort, as described above. Average gross revenue losses per vessel under each of the 18 combinations of alternatives were generally highest in NC followed by NY, MA, MD, NJ, RI, VA, CT, then DE.

Summary

The 2009 recreational harvest limits for summer flounder and scup are 15.3- and 41.5-percent higher, respectively, than the recreational harvest limits for year 2008. The

2009 black sea bass recreational harvest limit is 46 percent lower than the 2008 recreational harvest limit.

The 2008 summer flounder recreational fishery exceeded the recreational harvest limit by 31 percent. As a result, the proposed recreational management measures for summer flounder are likely to be more restrictive for 2009 (i.e., either larger minimum fish size, lower possession limits, and/or shorter fishing seasons) under the proposed conservation equivalency system (Summer Flounder Alternative 1) than those in place in 2008, given the magnitude of exceeding the previous year recreational harvest limit.

The scup recreational harvest limit was substantially increased for 2009. Action taken by the Commission to maintain status quo measures for state waters will result in landings that are similar to 2008. Only a very minor fraction of the recreational harvest limit is taken in the Federal waters of the EEZ. While retaining *status quo* measures for Federal waters may result in minor increases in scup recreational landings, over 95 percent of landings are expected to occur from state waters that are outside NMFS's jurisdiction. Given the revised stock status for scup, maintenance of the status quo is not expected to result in overfishing or moving the stock towards an overfished condition.

The proposed measures for black sea bass are more restrictive than the measures in place for 2008.

The proposed management measures, or management system in the case of conservation equivalency, were chosen because they allow for the maximum level of recreational landings, while allowing the NMFS to achieve the objectives of the FMP. Summer flounder conservation equivalency permits states to implement management measures tailored, to some degree, to meet the needs of their individual recreational fishery participants, provided the level of reduction is equal to the overall reduction needed coastwide, consistent with Framework Adjustment 2 to the FMP. The maintenance of scup *status quo* was selected because it will allow for a modest fishery in Federal waters while ensuring that overfishing does not occur in 2009. The majority of scup recreational harvest occurs within state waters, beyond the jurisdiction of NMFS. The black sea bass management measures were selected as they are projected to permit the maximum amount of landings under the 2009 recreational harvest limit.

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: March 26, 2009 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. In 648.102, the first sentence is revised to read as follows:

648.102

Time restrictions.

Unless otherwise specified pursuant to 648.107, vessels that are not eligible for a moratorium permit under 648.4(a)(3) and fishermen subject to the possession limit may fish for summer flounder from May 1 through September 30. * * *

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

648.103

Minimum fish sizes.

(b) Unless otherwise specified pursuant to 648.107, the minimum size for summer flounder is 20.0 inch (50.80 cm) TL for all vessels that do not qualify for a moratorium permit, and charter boats holding a moratorium permit if fishing with more than three crew members, or party boats holding a moratorium permit if fishing with passengers for hire or carrying more than five crew members.

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

648.105

Possession restrictions.

(a) Unless otherwise specified pursuant to 648.107, no person shall possess more than two 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. * * *

5. In 648.107, paragraph (a) introductory text 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 2009 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 - July 4 through September 7; minimum size - 21.5 inches (54.61 cm); and possession limit - one fish.

6. In 648.143, paragraph (b) is revised to read as follows:

648.143

Minimum sizes.

(b) The minimum fish size for black sea bass is 12.5 inches (31.75 cm) TL for all vessels that do not qualify for a moratorium permit, and for party boats holding a moratorium permit, if fishing with passengers for hire or carrying more than five crew members, and for charter boats holding a moratorium permit, if fishing with more than three crew members.