

sequencing) will be archived in the National Center for biotechnology Information's GenBank. Sequence accessions in GenBank should document the source, citing a NIST field number that identifies the animal; and

(ix) Agreement that credit and acknowledgment will be given to U.S. Fish and Wildlife Service (USFWS), US Geologic Service (USGS), National Institute of Standards and Technology (NIST), the Minerals Management Service (MMS), NMFS, the NMMTB, and the collector for use of banked tissues.

(2) The applicant shall insert the following acknowledgment in all publications, abstracts, or presentations based on research using the banked tissue:

The specimens used in this study were collected by [the contributor] and provided by the National Marine Mammal Tissue Bank, which is maintained in the National Biomonitoring Specimen Bank at NIST and which is operated under the direction of NMFS with the collaboration of MMS, USGS, USFWS, and NIST through the Marine Mammal Health and Stranding Response Program [and the Alaska Marine Mammal Tissue Archival Project if the samples are from Alaska].

(3) Upon submission of a complete application, the MMHSRP Program Manager will send the request and attached study plan to the following entities which will function as the review committee:

(i) Appropriate Federal agency (NMFS or USFWS) marine mammal management office for that particular species; and

(ii) Representatives of the NMMTB Collaborating Agencies (NMFS, USFS, USGS Biological Resources Division, and NIST) If no member of the review committee is an expert in the field that is related to the proposed research activity, any member may request an outside review of the proposal, which may be outside of NMFS or USFWS but within the Federal Government.

(4) The MMHSRP Program Manager will send the request and attached study plan to any contributor(s) of the tissue specimen sample. The contributor(s) of the sample may submit comments on the proposed research activity to the Director, Office of Protected Resources within 30 days of the date that the request was sent to the contributor(s).

(5) The USFWS Representative of the NMMTB Collaborating Agencies will be chair of review committees for requests involving species managed by the DOI. The MMHSRP Program Manager will be chair of all other review committees.

(6) Each committee chair will provide recommendations on the request and an evaluation of the study plan to the

Director, Office of Protected Resources, NMFS.

(7) The Director, Office of Protected Resources, NMFS, will make the final decision on release of the samples based on the advice provided by the review committee, comments received from any contributor(s) of the sample within the time provided in paragraph (a)(4) of this section, and determination that the proposed use of the banked tissue specimen is consistent with the goals of the MMHSRP and the NMMTB. The Director will send a written decision to the applicant and send copies to all review committee members. If the samples are released, the response will indicate whether the samples have been homogenized and, if not, the homogenization schedule.

(8) The applicant will bear all shipping and homogenization costs related to use of any specimens from the NMMTB.

(9) The applicant will dispose of the tissue specimen sample consistent with the provisions of the applicant's scientific research permit after the research is completed, unless the requester submits another request and receives approval pursuant to this section. The request must be submitted within three months after the original project has been completed.

(b) [Reserved]

[FR Doc. 04-15825 Filed 7-12-04; 8:45 am]

**BILLING CODE 3510-22-S**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 648

[Docket No. 040326103-4198-02; I.D. 031504A]

RIN 0648-AQ82

#### Fisheries of the Northeastern United States; Recreational Measures for the Summer Flounder, Scup, and Black Sea Bass Fisheries; Fishing Year 2004

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

**ACTION:** Final rule.

**SUMMARY:** NMFS issues this final rule to implement recreational measures for the 2004 summer flounder, scup, and black sea bass fisheries. The intent of these measures is to prevent overfishing of the summer flounder, scup, and black sea bass resources.

**DATES:** Effective July 13, 2004.

**ADDRESSES:** Copies of supporting documents used by the Summer Flounder, Scup, and Black Sea Bass Monitoring Committees and of the Environmental Assessment, Regulatory Impact Review, Initial Regulatory Flexibility Analysis (EA/RIR/IRFA), and Final Regulatory Flexibility Analysis (FRFA) are available from Patricia A. Kurkul, Regional Administrator, Northeast Region, National Marine Fisheries Service, One Blackburn Drive, Gloucester, MA 01930-2298. The EA/RIR/IRFA is also accessible via the Internet at <http://www.nero.noaa.gov/ro/doc/com.htm>.

**FOR FURTHER INFORMATION CONTACT:** Sarah McLaughlin, Fishery Policy Analyst, (978) 281-9279, fax (978) 281-9135.

#### SUPPLEMENTARY INFORMATION:

##### Background

The Summer Flounder, Scup, and Black Sea Bass Fishery Management Plan (FMP) and its implementing regulations found at 50 CFR part 648, subparts A, G (summer flounder), H (scup), and I (black sea bass), describe the process for specifying annual recreational measures. The recreational harvest limits for summer flounder, scup, and black sea bass fisheries were published as part of the 2004 specifications on January 14, 2004 (69 FR 2074). The 2004 coastwide recreational harvest limits are 11.21 million lb (5,085 mt) for summer flounder, 3.99 million lb (1,810 mt) for scup, and 4.01 million lb (1,819 mt) for black sea bass. The 2004 quota specifications, inclusive of the recreational harvest limits, were determined to be consistent with the 2004 target fishing mortality rate (F) for summer flounder and the target exploitation rates for scup and black sea bass.

The proposed rule to implement annual Federal recreational measures for the 2004 summer flounder, scup, and black sea bass fisheries was published on April 14, 2004 (69 FR 19805), and contained management measures (minimum fish sizes, possession limits, and fishing seasons) intended to keep annual recreational landings from exceeding the specified harvest limits. A complete discussion of the development of the recreational measures appeared in the preamble of the proposed rule and is not repeated here.

Table 1 contains the coastwide Federal measures for scup and black sea bass that are being implemented. As described below, NMFS has added one day (September 7) to the open season for

scup as a result of updated landings information for 2003. The recreational measures for black sea bass contained in this final rule are unchanged from those published in the proposed rule. For summer flounder, this final rule

implements conservation equivalency, as the process was described in the proposed rule. The management measures will vary according to the state of landing (see Table 2). All minimum fish sizes discussed below are

total length (TL) 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.

TABLE 1—2004 RECREATIONAL MEASURES

Species	Minimum Size (total length)	Possession Limit	Open Season
Summer Flounder	Varies according to state of landing		
Scup	10 inches (25.4 cm)	50 fish	January 1 through last day of February, and September 7 through November 30.
Black Sea Bass	12 inches (30.5 cm)	25 fish	January 1 through September 7, and September 22 through November 30.

TABLE 2—2004 STATE RECREATIONAL MANAGEMENT MEASURES FOR SUMMER FLOUNDER

State	Minimum Size (inches)	Minimum Size (cm)	Possession Limit (number of fish)	Open Season
MA	16.5	41.9	7	Year-Round.
RI	17.5	44.5	7	April 1 through December 31.
CT	17	43.2	6	Year-Round.
NY*	18	45.7	1	Year-Round.
NJ	16.5	41.9	8	May 8 through October 11.
DE	17.5	44.5	4	Year-Round.
MD	16	40.6	3	Year-Round.
VA	17	43.2	6	March 29 through December 31.
NC	14	35.6	8	Year-Round.

\*Under the provisions of Framework Adjustment 2 to the FMP, because NY's conservation equivalency proposal was disapproved by the Atlantic States Marine Fisheries Commission (Commission), NY is required to implement the precautionary default measures.

**Changes from the Proposed Rule**

In the proposed rule published on April 14, 2004 (69 FR 19805), NMFS indicated that a 58-percent reduction in scup landings would be necessary to achieve the target, and proposed scup open seasons of January 1 through February 29, and September 8 through November 30. Since publication of the proposed rule, and based on updated landings information for 2003 (9.3 million lb (4,233 mt) rather than 9.6 million lb (4,354 mt)), NMFS has determined that the required reduction in landings is 57 percent. The revised information allows for the extension of the open season by one day in September. Therefore, the second open season would begin September 7 rather than September 8. Section 648.122(g) is amended accordingly.

At the time the proposed rule was published, it was not known which states would have their conservation equivalency proposals approved by the Commission. The Commission approved the proposals of MA, RI, CT, NJ, DE, MD, VA, and NC. Based on the recommendation of the Commission, the

Regional Administrator finds that the recreational fishing measures proposed to be implemented by these states for 2004 are the conservation equivalent of the season, minimum size, and possession limit prescribed in §§ 648.102, 648.103, and 648.105(a), respectively. According to the regulation at § 648.107(a)(1), vessels subject to the recreational fishing measures of this part landing summer flounder in one of these states with an approved conservation equivalency program shall not be subject to the more restrictive Federal measures, and shall instead be subject to the recreational fishing measures implemented by the state in which they land. Section 648.107(a) is amended accordingly.

Based on the recommendation of the Commission, the Regional Administrator finds that the recreational fishing measures proposed to be implemented by NY for 2004 are not the conservation equivalent of the season, minimum size, and possession limit prescribed in §§ 648.102, 648.103, and 648.105(a), respectively. Therefore, according to § 648.107(b), federally permitted vessels subject to the

recreational fishing measures of this part, and other recreational fishing vessels registered in states and subject to the recreational fishing measures in this part, that land in NY are subject to the following precautionary default measures: An open season January 1 through December 31; a minimum size of 18 inches (45.7 cm) total length; and a possession limit of one fish.

**Comments and Responses**

Six comment letters were received, via e-mail, regarding the proposed recreational management measures.

*Comment 1:* Three of the comment letters indicated opposition to any change to the regulations that would result in more restrictive measures for the subject fisheries, especially summer flounder.

*Response:* Through this final rule, NMFS approves conservation equivalency for the recreational summer flounder. The Commission's conservation equivalency guidelines require each state, using state-specific equivalency tables, to determine and implement an appropriate possession limit, minimum fish size, and closed

season to achieve the landings reduction necessary for each state. The intention of conservation equivalency is for the combined effect of all of the states' management measures to achieve the same level of conservation as would Federal coastwide measures developed to achieve the recreational harvest limit, if implemented by all of the states. The state-specific tables are adjusted to account for the past effectiveness of the regulations in each state. Landings information for 2003 indicates that NY and NJ must reduce recreational summer flounder landings in 2004. Therefore, it is necessary for these states to implement more restrictive measures than implemented for 2003 in order to effect the required reductions.

*Comment 2:* One of the comment letters expressed support for maintaining the black sea bass regulations rather than relaxing them, given that there may a shift of effort from summer flounder to black sea bass. This letter also indicated concern about the Marine Recreational Fisheries Statistics Survey (MRFSS) data on which the recommended summer flounder reduction for NY is based, and about implementation of different summer flounder regulations in neighboring states.

*Response:* NMFS agrees that the black sea bass management measures implemented for 2003 should be maintained (as adjusted for the 2004 calendar), both to provide regulatory consistency and predictability to the party/charter and recreational fishing sectors and because of the possibility that relaxation of the management measures may result in the 2004 landings target being exceeded, resulting in the need for stricter measures in 2005.

To respond to concerns regarding the MRFSS landings estimated for 2003, the NMFS Recreational Fishery Statistics Team re-examined the 2003 summer flounder and scup harvest estimates relative to those produced for the previous 5 years, and found no errors in the data or estimates for either NY or NJ. Its review indicates that both the number of successful trips and the average number of fish increased significantly in both the party/charter and private/rental boat modes in those states, and these increases account for the increase in the landings estimates. The Monitoring Committees, the Mid-Atlantic Fishery Management Council (Council), and NMFS base their recommendations and decisions regarding recreational measures for the summer flounder, scup, and black sea bass fisheries on the MRFSS landings

because they are considered the best information available.

As indicated in the response to Comment 1, under conservation equivalency, each state uses state-specific tables to determine and implement an appropriate possession limit, minimum fish size, and closed season to achieve the landings reduction necessary for each state. Because last year's landings in each state vary as a percentage of the state's target, the measures that a state must implement to hold this year's landings to within the target will also vary. Thus, there may be differing management measures implemented in neighboring states under the conservation equivalency process.

*Comment 3:* One commenter submitted two comment letters that indicate support for marine protected areas, reduction of fishing quotas in general, and fisheries enforcement; and opposition of quota allocation to commercial entities, any increase to the research set-aside quota for scup, and fishing opportunities in states that exceed their summer flounder recreational harvest limit.

*Response:* This rule implements management measures (minimum fish sizes, possession limits, and fishing seasons) intended to keep annual recreational landings from exceeding the specified harvest limits. While NMFS acknowledges that consideration of marine protected areas, sector allocation shares, and fisheries enforcement may be important, this rule is not the proper mechanism to address these general issues. The FMP does not allow for closure of the summer flounder recreational fishery, or a reduction of a state's summer flounder quota, as a consequence of overharvest of a state's recreational harvest limit.

#### Classification

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

The Assistant Administrator for Fisheries, NOAA, finds, for certain measures contained in this rule, good cause pursuant to 5 U.S.C 553(d)(3) to make this rule effective immediately, thereby waiving the 30-day delayed effectiveness date required by 5 U.S.C. 553. Additionally, pursuant to 5 U.S.C 553(d)(1), certain measures in this rule relieve a restriction and are therefore not subject to a delay in effective date. The linchpin of NMFS's decision whether to proceed with the coastwide measures or to give effect to the conservation equivalent measures adopted by the individual states is advice from the Commission as to the

results of its review of the plans of the individual states. The measures implemented by NY on May 1, 2004, differed from the proposals approved by the Commission's Technical Committee for that state in March 2004, and were determined by the Technical Committee to be inconsistent with the annual specifications set by the Commission's Summer Flounder Management Board (Board). The Commission gave NY until June 15, 2004, to implement a management program that would achieve the required 48.5-percent reduction in landings. On June 17, 2004, the Commission informed NMFS that NY has been found out of compliance and that the management programs implemented by the other states were approved by the Board.

During the pendency of the Commission's process and subsequent preparation of this rule by NMFS, the recreational fisheries for these three species have commenced. The party and charter boats from the various states are by far the largest component of the recreational fishery that fish in the Federal exclusive economic zone. The Federal coastwide regulatory measures for the three species that were codified last year remain in effect. The Federal coastwide measures for the summer flounder fishery are more restrictive than the measures adopted by the states, approved by the Commission as conservation equivalents, and implemented by NMFS in this rule. Further, the fishing seasons for the black sea bass fishery that this rule implements is less restrictive than the season in the Federal coastwide measures currently in effect. Federally permitted recreational vessels subject to these more restrictive measures are currently operating at a disadvantage since non-Federally permitted recreational vessels can fish in state waters under more liberal measures. With respect to the scup fishery, the fishing season must be shortened by over a month to achieve the required reduction in recreational fishing effort. The Federal coastwide measures currently in effect allow the recreational fishing season for scup to reopen on July 1 instead of the September 7 reopening date in this rule. Failure to have this rule effective immediately will allow recreational overages this year, leading to increased restrictions on the recreational scup fishery next year.

Included in this final rule is the FRFA prepared pursuant to 5 U.S.C. 604(a). The FRFA incorporates the economic impacts summarized in the IRFA for the proposed rule (69 FR 19805), the comments on, and responses to, the proposed rule, and the analyses

completed in support of this action. A copy of the FRFA is available from the Council (see **ADDRESSES**).

### 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*

Six comments were received on the measures contained in the proposed rule. No comments were received on the IRFA or the economic impact of the rule. No changes to the proposed rule were required to be made as a result of public comments. For a summary of the comments received, refer to the section above titled "Comments and Responses."

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

The Council estimated that the proposed action could affect any of the 775 vessels possessing a Federal party/charter permit for summer flounder, scup, and/or black sea bass in 2002, the most recent year for which complete permit data are available. Only 327 of these vessels reported active participation in the recreational summer flounder, scup, and/or black sea bass fisheries in 2002.

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

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

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

Under the conservation equivalency approach, each state may implement unique management measures appropriate to that state to achieve state-specific harvest limits, as long as the combined effect of all of the states' management measures achieves the same level of conservation as would Federal coastwide measures developed to achieve the annual recreational harvest limit. The conservation equivalency approach allows states flexibility in the specification of management measures, unlike the application of one set of coastwide measures. It is not possible to further mitigate economic impacts on small entities because the specification of the

recreational management measures (possession limits, minimum fish size, and fishing seasons) contained in this final rule 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 as codified for the 2003 fishing season. In consideration of the Council-recommended recreational harvest limits established for the 2004 fishing year, implementation of the same recreational measures established for the 2003 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 scup fishery, would be inconsistent with National Standard 1 of the Magnuson-Stevens Act. Therefore, the status quo alternative was not considered to be a reasonable alternative to the preferred action and its collective impacts were not analyzed in the EA/IRFA. The no action measures, with open seasons modified slightly for the 2004 calendar, were analyzed in Alternative 2.

At this time, it is not possible to determine the economic impact of summer flounder conservation equivalency on each state. However, it is likely to be proportional to the level of landings reductions required. If the conservation equivalency alternative is effective at achieving the recreational harvest limit, then it is likely to be the only alternative that minimizes economic impacts, to the extent practicable, yet achieves the biological objectives of the FMP. Because states have a choice as to the specific measures to apply to landings in each state, it is more rational for the states to adopt conservation equivalent measures that result in fewer adverse economic impacts than to adopt the more restrictive measures contained in the precautionary default alternative (i.e., only one fish measuring at least 18 inches (45.7 cm)).

### Small Entity Compliance Guide

Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996 states that, for each rule or group of related rules for which an agency is required to prepare a FRFA, the agency shall publish one or more guides to assist small entities in complying with the rule, and shall designate such publications as "small entity

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

### List of Subjects in 50 CFR Part 648

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: July 7, 2004.

#### Rebecca Lent,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

■ For the reasons set out in the preamble, 50 CFR part 648 is 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 § 648.107, paragraph (a) introductory text is revised to read as follows:

#### § 648.107 Conservation equivalent measures for the summer flounder fishery.

(a) The Regional Administrator has determined that the recreational fishing measures proposed to be implemented by the states of Massachusetts, Rhode Island, Connecticut, New Jersey, Delaware, Maryland, Virginia, and North Carolina for 2004 are the conservation equivalent of the season, minimum size, and possession limit prescribed in §§ 648.102, 648.103, and 648.105(a), respectively. This determination is based on a recommendation from the Summer Flounder Board of the Atlantic States Marine Fisheries Commission.

\* \* \* \* \*

■ 3. In § 648.122, paragraph (g) is revised to read as follows:

#### § 648.122 Time and area restrictions.

\* \* \* \* \*

(g) *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 possess scup, except from January 1 through the last day of February, and from September 7 through November 30. This time period may be adjusted pursuant to the procedures in § 648.120.

■ 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)(7), and fishermen subject to the possession limit, may not possess black sea bass, except from January 1 through September 7, and September 22 through November 30. This time period may be adjusted pursuant to the procedures in § 648.140.

[FR Doc. 04-15824 Filed 7-12-04; 8:45 am]

**BILLING CODE 3510-22-S**

**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

**50 CFR Part 679**

[Docket No. 031124287-4060-02; I.D. 070804A]

**Fisheries of the Exclusive Economic Zone Off Alaska; Pacific Ocean Perch in the Eastern Aleutian District of the Bering Sea and Aleutian Islands**

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

**ACTION:** Closure.

**SUMMARY:** NMFS is prohibiting directed fishing for Pacific ocean perch in the Eastern Aleutian District of the Bering Sea and Aleutian Islands management area (BSAI). This action is necessary to prevent exceeding the 2004 total

allowable catch (TAC) of Pacific ocean perch in this area.

**DATES:** Effective 1200 hrs, Alaska local time (A.l.t.), July 8, 2004, through 2400 hrs, A.l.t., December 31, 2004.

**FOR FURTHER INFORMATION CONTACT:** Josh Keaton, 907-586-7228.

**SUPPLEMENTARY INFORMATION:** NMFS manages the groundfish fishery in the BSAI exclusive economic zone according to the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

The 2004 TAC specified for Pacific ocean perch in the Eastern Aleutian District of the BSAI is 2,829 metric tons (mt) as established by the 2004 harvest specifications for groundfish of the BSAI (69 FR 9242, February 27, 2004).

In accordance with § 679.20(d)(1)(i), the Administrator, Alaska Region, NMFS (Regional Administrator), has determined that the 2004 TAC for Pacific ocean perch in the Eastern Aleutian District will soon be reached. Therefore, the Regional Administrator is establishing a directed fishing allowance of 2,729 mt, and is setting aside the remaining 100 mt as bycatch to support other anticipated groundfish fisheries. In accordance with § 679.20(d)(1)(iii), the Regional Administrator finds that this directed fishing allowance has been reached.

Consequently, NMFS is prohibiting directed fishing for Pacific ocean perch in the Eastern Aleutian District of the BSAI.

**Classification**

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA, (AA), finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such a requirement is impracticable and contrary to the public interest. This requirement is impracticable and contrary to the public interest as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion and would delay the closure of the directed fishery for Pacific ocean perch in the Eastern Aleutian District of the BSAI.

The AA also finds good cause to waive the 30-day delay in the effective date of this action under 5 U.S.C. 553(d)(3). This finding is based upon the reasons provided above for waiver of prior notice and opportunity for public comment.

This action is required by § 679.20 and is exempt from review under Executive Order 12866.

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

Dated: July 8, 2004.

**Alan D. Risenhoover,**  
*Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.*  
[FR Doc. 04-15822 Filed 7-8-04; 2:21 pm]

**BILLING CODE 3510-22-S**