

## PART 7—SPECIAL REGULATIONS, AREAS OF THE NATIONAL PARK SYSTEM

■ 1. The authority for part 7 continues to read as follows:

**Authority:** 16 U.S.C. 1, 3, 9a, 462(k); Sec. 7.96 also issued under D.C. Code 10–137 (2001) and D.C. Code 50–2201 (2001).

### § 7.94 [Removed and reserved]

■ 2. Remove and reserve § 7.94.

Dated: June 29, 2010.

**Will Shafroth,**

*Acting Assistant Secretary for Fish and Wildlife and Parks.*

[FR Doc. 2010–16600 Filed 7–7–10; 8:45 am]

BILLING CODE 4312–BA–P

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 648

[Docket No. 0907211158–0265–02]

RIN 0648–AY04

### Fisheries of the Northeastern United States; Recreational Management Measures for the Summer Flounder, Scup, and Black Sea Bass Fisheries; Fishing Year 2010

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

**ACTION:** Final rule.

**SUMMARY:** NMFS implements recreational management measures for the 2010 summer flounder, scup, and black sea bass fisheries. These actions are necessary to comply with regulations implementing the Summer Flounder, Scup, and Black Sea Bass Fishery Management Plan (FMP) and to ensure compliance with the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). The intent of these measures is to prevent overfishing of the summer flounder, scup, and black sea bass resources.

**DATES:** Effective August 9, 2010.

**ADDRESSES:** Copies of supporting documents used by the Summer Flounder, Scup, and Black Sea Bass Monitoring Committees and of the Environmental Assessment, Regulatory Impact Review, and Initial Regulatory Flexibility Analysis (EA/RIR/IRFA) and EA/RIR/IRFA Addendum are available from Daniel Furlong, Executive Director, Mid-Atlantic Fishery Management

Council, Room 2115, Federal Building, 800 N. State Street, Suite 201, Dover, DE 19901. The EA/RIR/IRFA is also accessible via the Internet at <http://www.nero.noaa.gov>. The Final Regulatory Flexibility Analysis (FRFA) consists of the IRFA, public comments and responses contained in this final rule, and the summary of impacts and alternatives contained in this final rule. Copies of the small entity compliance guide and EA/RIR/IRFA document and addendum are available from Patricia A. Kurkul, Regional Administrator, Northeast Region, NMFS, 55 Great Republic Drive, Gloucester, MA 01930–2276.

**FOR FURTHER INFORMATION CONTACT:** Michael Ruccio, Fishery Policy Analyst, (978) 281–9104.

#### SUPPLEMENTARY INFORMATION:

##### Background

The summer flounder, scup, and black sea bass fisheries are managed cooperatively by the Atlantic States Marine Fisheries Commission (Commission) and the Mid-Atlantic Fishery Management Council (Council), in consultation with the New England and South Atlantic Fishery Management Councils. The FMP and its implementing regulations, which are found at 50 CFR part 648, subparts A (general provisions), G (summer flounder), H (scup), and I (black sea bass), describe the process for specifying annual recreational management measures that apply in the Exclusive Economic Zone (EEZ). The state from North Carolina to Maine manage these fisheries within 3 nautical miles of their coasts, under the Commission's plan for summer flounder, scup, and black sea bass. The Federal regulations govern fishing activity in the EEZ, as well as vessels possessing a Federal fisheries permit, regardless of where they fish.

The 2010 coastwide recreational harvest limits, after deduction of research set-aside (RSA), are 8,586,440 lb (3,896 mt) for summer flounder; 3,011,074 lb (1,366 mt) for scup; and 1,830,390 lb (830 mt) for black sea bass. The final 2010 quota specifications, inclusive of the recreational harvest limits, were previously implemented by NMFS effective January 1, 2010 (74 FR 67978; December 22, 2009), for summer flounder and scup, and effective February 2, 2010, for black sea bass (75 FR 6586).

The proposed rule to implement annual Federal recreational measures for the 2010 summer flounder, scup, and black sea bass fisheries was published on April 27, 2010 (75 FR 22087), along with proposed

management measures (minimum fish sizes, possession limits, and fishing seasons) intended to keep annual recreational landings from exceeding the specified harvest limits.

#### 2010 Recreational Management Measures

Additional discussion on the development of the recreational management measures appeared in the preamble of the proposed rule and is not repeated here. All minimum fish sizes discussed below are total length measurements of the fish, i.e., the straight-line distance from the tip of the snout to the end of the tail while the fish is lying on its side. For black sea bass, total length measurement does not include the caudal fin tendril. All possession limits discussed below are per person.

##### Summer Flounder Management Measures

The Commission notified the NMFS Northeast Regional Administrator by letter dated April 6, 2010, that the 2010 summer flounder recreational fishery management programs (i.e., minimum fish size, possession limit, and fishing seasons) implemented by the states from Massachusetts to North Carolina have been reviewed by the Commission's Technical Committee and approved by the Commission's Summer Flounder Management Board (SF Board). The correspondence indicates that the Commission-approved management programs are projected to restrict 2010 recreational summer flounder coastwide landings consistent with the state-specific requirements established by the Technical Committee and SF Board through the Commission process.

Based on the recommendation of the Commission, the NMFS Northeast Regional Administrator finds that the recreational summer flounder fishing measures proposed to be implemented by the individual states for 2010 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 § 648.107(a)(1), vessels subject to the recreational fishing measures of this part and landing summer flounder in a state with an approved conservation equivalency program shall not be subject to Federal measures, and shall instead be subject to the recreational fishing measures implemented by the state in which they land. Section 648.107(a) has been amended to recognize state-implemented measures as conservation equivalent of the coastwide recreational management measures for 2010. For clarity, the 2010

summer flounder management measures adopted by the individual states vary according to the state of landing, as specified in the following table:

TABLE 1—2010 COMMISSION APPROVED STATE-BY-STATE CONSERVATION EQUIVALENT RECREATIONAL MANAGEMENT MEASURES FOR SUMMER FLOUNDER

State	Minimum Fish Size		Possession Limit (number of fish)	Fishing Season
	inches	cm		
MA	18.5	46.99	5	May 22–September 6
RI	19.5	49.53	6	May 1–December 31
CT	19.5	49.53	3	May 15–August 25
NY	21.0	53.34	2	May 15–September 6
NJ	18.0	45.72	6	May 29–September 6
DE	18.5	46.99	4	January 1–October 13
MD	19.0	48.26	3	April 17 through November 22
VA	18.5	46.99	4	January 1 through December 31
NC <sup>1</sup>	15.0	38.10	8	January 1 through December 31

<sup>1</sup> *Pamlico Sound, NC*—No person may possess flounder less than 14.0 in (35.56 cm) total length (TL) taken from internal waters for recreational purposes west of a line beginning at a point on Point of Marsh in Carteret County at 35°04.6166'N lat.-76°27.8000'W long., then running northeasterly to a point at Bluff Point in Hyde County at 35°19.7000'N lat.-76°09.8500'W long. In Core and Clubfoot creeks, the Highway 101 Bridge constitutes the boundary north of which flounder must be at least 14.0 (35.56 cm) in TL.

*Albemarle Sound, NC*—No person may possess flounder less than 14.0 in (35.56 cm) TL taken from internal waters for recreational purposes west of a line beginning at a point 35°57.3950'N lat.- 76°00.8166'W long. on Long Shoal Point; running easterly to a point 35°56.7316'N lat.-75°59.3000' W long. near Marker "5" in Alligator River; running northeasterly along the Intracoastal Waterway to a point 36°09.3033'N lat.-75°53.4916'W long. near Marker "171" at the mouth of North River; running northwesterly to a point 36°09.9093'N lat.-75°54.6601'W long. on Camden Point.

*Browns Inlet South, NC*—No person may possess flounder less than 14.0 in (35.56 cm) TL in internal and Atlantic Ocean fishing waters for recreational purposes west and south of a line beginning at a point 34°37.0000'N lat.-77°15.000'W long.; running southeasterly to a point 34°32.0000'N lat.-77°10.0000'W long.

#### Scup Management Measures

This rule implements the measures contained in the April 27, 2010,

proposed rule: A 10.5-in (26.67-cm) minimum fish size, a 10-fish per person

possession limit, and an open season of June 6 through September 26.

TABLE 2—2010 SCUP RECREATIONAL MANAGEMENT MEASURES

Fishery	Minimum Fish Size		Possession Limit	Fishing Season
	inches	cm		
Scup	10.5	26.674	10 fish	June 6 through September 26

The scup fishery in state waters will be managed under a regional conservation equivalency system developed by the Commission over the last 8 years. Because the Federal FMP does not contain provisions for conservation equivalency, and states may adopt their own unique measures, the Federal and state recreational scup management measures will differ for 2010. In accordance with § 648.4(b)(1)(i), when Federal, state, and local requirements differ, federally permitted scup vessels are required to

adhere to the most restrictive requirement regardless of where the vessel fishes.

#### Black Sea Bass Management Measures

This rule implements the black sea bass measures adopted by the Commission for 2010: A 12.5-in (31.75-cm) minimum fish size, a 25-fish per person possession limit and fishing seasons from May 22–October 11 and November 1–December 31.

#### Changes from the Proposed Rule

NMFS had proposed in the April 27, 2010 (75 FR 22087), rule to implement the Council-preferred measures (12.5-in (31.75-cm) minimum fish size, 25-fish possession limit, and fishing seasons of May 22–August 8 and September 4–October 4) for the 2010 black sea bass recreational fishery. NMFS anticipated additional data that might permit liberalization of the 2010 measures would become available in the interim between publication of the proposed and final rules. These data, from the

Marine Recreational Fisheries Statistics Survey (MRFSS), became available in late April.

The final MRFSS data indicated that 2009 landings of black sea bass were 2.31 million lb (1,048 mt). Prior to the release of these data, black sea bass landing estimates were used for the months of September and October 2009. At the time of the proposed rule, the best available information, which included estimates for September and October, indicated that 2009 recreational black sea bass landings were approximately 3.31 million lb (1,501 mt). The Council's originally preferred measures contained in the proposed rule would have reduced 2010 landings by 44 percent from 2009 levels, consistent with the assumption that 2009 landings were 3.31 million lb (1,501 mt). However, given the final 2009 landings data, a 21-percent reduction in 2010 landings from 2009 levels is necessary.

Many had expressed concern during the management measures development process that actual landings from the 2-

month time period in 2009 would be significantly different from any generated estimates, owing in part to the 108-day closure of the black sea bass recreational fishery in the Federal waters of the EEZ that was implemented by NMFS effective October 5, 2009 (74 FR 51092). Because of the timing for Council and Commission meetings and the proposed rule 30 day comment period, NMFS provided a contextual framework for the likelihood that additional data would be available for analysis and solicited specific comments on alternative management measures in the proposed rule (75 FR 22087; April 27, 2010).

The Commission had an opportunity to analyze the final 2009 MRIP landings data prior to its May 2010 meeting. During this meeting, the Commission adopted the measures now implemented through this final rule. These measures are projected to reduce landings by 26 percent from 2009 levels. The Commission adopted measures that were slightly more precautionary (i.e., greater than a 21-percent reduction in

2010 landings from 2009 levels) to allow for a reasonable conservation buffer to account for management uncertainty in the harvest estimates and the effectiveness of the regulations. The Council, as well as members of the public and recreational fishing advocacy groups, provided written comment fully supporting implementation of the less restrictive management measures adopted by the Commission. NMFS finds the measures make use of the best available information in as timely a fashion as the development, review, and implementation process will permit. In addition, NMFS finds that the measures implemented in this final rule provide some buffer to offset management-related uncertainty and mitigate foregone recreational opportunity, thereby reducing adverse socio-economic impacts. Thus, NMFS is implementing these measures for the 2010 fishing season, even though they were not contained in the proposed rule.

TABLE 3—2010 BLACK SEA BASS RECREATIONAL MANAGEMENT MEASURES

Fishery	Minimum Fish Size		Pos-session Limit	Fishing Season
	inches	cm		
Black Sea Bass	12.5	31.75	25 fish	May 22–October 11 and November 1–December 31

**Comments and Responses**

Eight comment letters were received regarding the proposed recreational management measures. The Commission's Black Sea Bass Management Board provided the revised 2010 black sea bass measures adopted for state waters as comments on the proposed rule and recommended similar measures be adopted for Federal waters. Five comment letters, including one from the Council, spoke in support of the Commission's revised 2010 black sea bass measures and urged NMFS to adopt similar measures for Federal waters. For clarity, NMFS is implementing, through this rule, the identical black sea bass measures adopted by the Commission and with the full support of the Council for the 2010 black sea bass recreational fishery in Federal waters.

One recreational fishery advocacy group wrote in favor of the summer flounder conservation equivalency system being implemented through this rule.

Comments that require responses are addressed below. Similar comments were consolidated for NMFS's responses:

*Comment 1:* One commenter asked why commercial summer flounder fishermen can keep fish smaller than most recreational minimum fish sizes implemented by states through conservation equivalency. This commenter stated that most large summer flounder are female and the utilization of high recreational minimum fish sizes will catch a disproportionately high number of female fish and could negatively impact stock rebuilding efforts.

*Response:* The issue of different minimum fish sizes between commercial and recreational fisheries is often raised. Minimum fish sizes for both sectors are implemented by NMFS based on recommendations received from the Council. In regards to summer flounder, the minimum commercial fish size has been set at 14 in (35.56 cm) since the late 1990s. The minimum commercial size was established following mesh size selectivity studies

conducted for implementation of the original Summer Flounder FMP. These mesh studies considered the capabilities of certain mesh sizes to not encounter fish of certain sizes.

The Council has recommended the 14-in (35.56-cm) minimum commercial summer flounder size to address National Standard 9 of the Magnuson-Stevens Act. National Standard 9 requires that conservation and management measures shall, to the extent practicable, minimize bycatch and, when bycatch cannot be avoided, minimize the mortality of such bycatch. Commercial fishing conducted with bottom tending mobile gear, such as trawl nets, is less discriminating than recreational hook-and-line fishing gear. Thus, commercial fishing operations tend to capture a wider size range and higher numbers of summer flounder than do recreational fishermen. The 14-in (35.56-cm) size strikes a balance between converting potential discards to landings and ensuring summer flounder have an opportunity to spawn before becoming legal minimum commercial

size. The current mesh size required for most summer flounder trawl gear is 5.5 in (13.97 cm) and is engineered to catch fish 14 in (35.56 cm) and larger.

Recreational minimum fish size has been used as a tool to constrain landings in the recreational fishery. Recreationally captured summer flounder have a lower associated mortality than do those captured by bottom-tending mobile commercial gear such as trawl nets and scallop dredges. Eighty percent of commercially discarded summer flounder are assumed to be dead or will die after release. By contrast, the most recent assessment for summer flounder used recent research information that indicated the mortality rate for recreationally caught and released summer flounder was 10 percent.

The concept that recreational fisheries target larger, typically female fish has been discussed and examined in recent stock assessments. Additional research on stock sex ratios, natural and fishing mortality by sex and size, and potentially different growth and maturity rates by sex needs further examination for definitive conclusions on potential impacts of the management strategy that has been employed; however, current stock projections indicate that the summer flounder stock will be rebuilt prior to the January 1, 2013, rebuilding deadline.

*Comment 2:* One comment suggested that summer flounder management measures should be two fish in the 14 to 18-in (35.56 to 45.72-cm) size range and four fish over 18 in (45.72 cm).

*Response:* The Council-conducted analysis for the 2010 summer flounder recreational management measure coastwide alternatives indicated a 19-in (48.26-cm) minimum fish size, 2-fish possession limit, and coastwide season from May 1 to September 30 was predicted to constrain 2010 landings to the 8.85-million-lb (3,896-mt) recreational harvest limit. The commenter's recommended management measures are substantially more liberal than this, the most liberal coastwide measures analyzed and considered by the Council. Thus, the commenter's suggested measures would likely result in landings well above the recreational harvest limit. Because such measures would not adequately constrain the 2010 recreational summer flounder fishery and would likely exceed the established recreational harvest limit, NMFS finds that such measures would be inconsistent with the goals and objectives of the FMP and the Magnuson-Stevens Act.

NMFS is implementing, through this final rule, conservation equivalency

wherein individual state measures approved through the Commission process are found to be equivalent to the coastwide measures. In the conservation equivalency process, individual states have the ability to modify the minimum fish size, possession limits, and fishing season consistent with Commission-imposed requirements before NMFS ultimately elects to implement conservation equivalency or coastwide measures for the fishery. States have some ability to adjust management measures in a manner that best suits the needs of the anglers and fisheries prosecuted in the waters adjacent to their respective state. Some states have developed and implemented, through the Commission process, minimum fish sizes similar to those suggested by the commenter. NMFS has, in turn, adopted through this rule, conservation equivalency for Federal waters.

*Comment 3:* One recreational fishery angling group opposed the proposed scup recreational management measures stating that (1) the scup stock is rebuilt, (2) annual catch limits (ACLs) and accountability measures (AMs) are not yet a statutory requirement for the scup fishery, (3) that the 10-fish per person possession limit will dissuade potential party/charter anglers from booking trips, and (4) that there is no conservation or legal requirement to reduce recreational scup landings for 2010. The commenter did not suggest any alternative measures and did acknowledge that a very small percentage of annual recreational scup landings occur in Federally-managed waters under the jurisdiction of NMFS.

*Response:* In response, NMFS agrees that the best available scientific information does indicate that the scup stock has been rebuilt, thereby satisfying the rebuilding requirements for the previously overfished stock.

NMFS notified the Council on April 22, 2009, that the results of a 2008 externally peer reviewed Data Poor Stocks Working Group (DPSWG) assessment of scup had found that the stock had achieved and exceeded the required rebuilding biomass target. In that same correspondence, NMFS further relayed that the peer-review panel from the DPSWG indicated that the assessment contained a high degree of uncertainty. In its final report, the peer review panel recommended:

"...that rapid increases in quota to meet the revised MSY [Maximum Sustained Yield] would be unwarranted given uncertainties in recent [scup] recruitments. A more gradual increase in quotas is a preferred approach reflective of the uncertainty in the [scup] model estimates and stock status."

The Council's SSC has adhered to the peer review panel's recommendation in

setting scup catch levels. For 2010, the SSC recommended a 10-percent increase in Total Allowable Catch (TAC) as the ABC level from the 2009 levels. The recreational harvest limit is a derivative of the overall TAC.

While the perception of the scup stock has changed and is more favorable than recent years and the statutory requirements for stock rebuilding have been satisfied, the catch recommendations from the Council's scientific advisory body, the SSC, has remained precautionary in light of uncertainty associated with the revised stock assessment. NMFS, in turn, has implemented the Council's recommendation for catch levels as guided by the SSC's ABC recommendation. The SSC and Council's Scup Monitoring Committee will review updated stock assessment information in June 2010 before making catch level recommendation for the 2011 fishing year.

While the requirement for stocks not subject to overfishing to have in place ACLs and AMs, as required by the Magnuson-Stevens Act, does not take effect until 2011, the Council has put into practice the utilization of its SSC for catch level advice. Utilization of the SSC in catch level recommendations did not result in a delayed implementation phase-in period when the Magnuson-Stevens Act was reauthorized in 2006. The SSC has been involved in making ABC recommendations since 2008 for the 2009 fishing year.

The SSC brings to bear considerable scientific expertise in making catch level recommendations. As such, the ABC recommended by the SSC sets the standard for scientifically justifiable catch levels. For the Council or NMFS to deviate from the SSC-recommended ABC would require sufficient justification to explain why an alternate catch level was the more appropriate and a better use of the best available scientific information. In the case of scup, the SSC expressed reservations about the information provided by the most recent stock assessment and recommended an ABC that, relative to the estimated total biomass of scup, is risk averse.

The Council may further reduce the ABC recommended by the SSC for additional considerations, consistent with the requirements of National Standard 1 of the Magnuson-Stevens Act to achieve Optimal Yield (OY) on a continuing basis. NMFS provided a detailed response to similar comments that ACLs and AMs are not yet requirements and that the 2010 scup catch level had been set too low to achieve OY on a continuing basis in the

2010 specifications final rule (74 FR 67978, December 22, 2009). Those responses are not repeated here, but are instead incorporated by reference. NMFS acknowledges the commenter's concern that the scup stock status and catch level recommendations appear to be at odds with one another; however, as explained, the SSC and Council have taken a precautionary approach in managing the scup stock, consistent with assessment-related advice to do so. This approach continues to be supported by NMFS.

As part of the regulatory impact review and general economic impact analyses performed for the 2010 recreational management measures, the Council provided an analysis of the potential impacts of a 10–fish per person possession limit for scup. The analysis concluded that up to 2.24 percent of party/charter vessels could be impacted by the 10–fish possession limit. While this would suggest that the impact is low, the analysis indicated that predicting year-to-year angler behavior in response to numerous influential factors, including regulatory changes, is difficult. The Council performed an analysis of all potential combinations of summer flounder, scup, and black sea bass alternatives with a hypothetical 25- and 50–percent reduction in fishing trips. The range of impacts varies considerably from a low of \$399 per vessel in Delaware to up to \$44,000 per vessel in North Carolina. These are total impacts, inclusive of all potential changes for summer flounder, scup, and black sea bass management measures and up to a 50–percent reduction in angler trips.

Furthermore, the majority of scup party/charter landings occur in state waters and may occur on vessels without Federal permits. In such situations, the data necessary to quantify potential impacts are unavailable as permit data are utilized as the basis for impact assessment. See the Council's EA/RIR/IRFA document for additional detail; information on obtaining a copy of the document is provided under the **ADDRESSES** section of the preamble.

Given the minor magnitude of recreational scup fishing in Federal waters, the economic impacts associated with the implemented measures are expected to be equally minor relative to the entire scup recreational fishery.

Under the recreational fishery management methods utilized by the Council's Scup Monitoring Committee to develop measures designed to constrain recreational landings to the recreational harvest limit, the level of landings in the preceding year are used

as a basis for calculating the effectiveness of measures for the upcoming fishing year relative to the catch level. More simply stated, when landings in the previous year exceed the recreational harvest limit for the current year, measures are adjusted. The amount of adjustment necessary is dependent on the level of recreational landings that are allowed under the recreational harvest limit. In years where the recreational harvest limit increases from the previous year, it may not be necessary to adjust measures even if the previous year recreational harvest limit had been exceeded if the amount of the overage is less than the increase in the limit. This process occurs regardless of stock status or other imposed statutory requirements. The underlying reason for such adjustments is to constrain the recreational sector landings within the recreational harvest limit which, in turn, is part of the total fishing mortality permitted for the stock in any given year. As previously discussed, the annual level of fishing mortality established for the stock is established through a Council process that includes a scientifically-based recommendation for ABC from the SSC. The entirety of the catch level process considers both scientific and management uncertainty and other potential issues and is designed to ensure that the stock is not overfished. For scup, while the stock status would suggest that overfishing is unlikely, the DPSWG peer review panel and SSC have indicated that sufficient uncertainty exists within the new assessment and catch levels should proceed cautiously rather than be increased rapidly.

*Comment 4:* A recreational fishing advocacy group wrote in support of extending the black sea bass fishing season but objected to the Commission's approach of providing additional buffering to account for management uncertainty. The commenters state that such buffering is arbitrary and inconsistent with science-based management. Furthermore, the commenter states that there is insufficient technical information in the Commission's decision to explain the additional buffer.

*Response:* The additional buffer the comment refers to is the percent reduction in 2010 black sea bass landings from 2009 levels required to constrain recreational harvest below the established RHL. Based on the 2009 landings data and the 2010 black sea bass recreational harvest limit, a minimum of a 21.4–percent reduction in landings is required to ensure that landings do not exceed the established

limit. However, in selecting measures for 2010, the Commission elected to adopt measures (i.e., minimum fish size, possession limit, and fishing season) that provide an estimated 26–percent reduction in landings. In their letter to NMFS recommending adoption of identical measures for Federal waters, the Commission's Black Sea Bass Management Board indicated that the additional 4.6–percent reduction in landings was

selected to, "allow for a reasonable conservation buffer to account for management uncertainty in the harvest estimates and the effectiveness of the regulations."

NMFS has determined that this in an appropriate application of management uncertainty, consistent with the revised National Standard 1 Guidance (NS 1 Guidance (74 FR 3178; January 16, 2009)). NMFS is implementing, through this rule, measures identical to the Commission-adopted black sea bass recreational management measures because the additional offset in landings provides a greater likelihood of constraining landings below the established 2010 recreational harvest limit. These measures were fully supported and also recommended by the Council, which also agreed that some buffering was advisable given the uncertainty of harvest estimates and unknown effectiveness of the regulations being implemented. NMFS does not find the application of an additional 4.6–percent calculated reduction in landings as arbitrary; rather, it represents a substantive attempt by the Commission and Council to quantify and buffer against issues that led the 2009 black sea bass fishery to exceed the established recreational harvest limit for that year. In the NS 1 Guidance, NMFS recommends that in situations where both scientific and management-related uncertainty exist for a particular fishery, both should be addressed. While these requirements are not yet effective for the FMP, the action taken by the Commission, supported by the Council, and implemented by NMFS is consistent with the tenants of the NS 1 Guidance. The additional offset is not, as the commenter suggests, an offset for scientific uncertainty. Rather, it is as previously indicated a buffer to account for management uncertainty designed to help ensure that 2010 recreational black sea bass landings do not exceed the established recreational harvest limit.

*Comment 5:* A recreational fishing advocacy group supported including January and February in the black sea bass fishing season in addition to the May 22–October 11 and November 1–December 31 season implemented by

this rule. The comment states that Fishing Vessel Trip Reports (VTRs) provided by charter/party vessels would indicate that black sea bass landings during these months are minimal and that closing the season in January and February provides no contribution to the calculated reduction in landings.

*Response:* NMFS disagrees with the comment that January and February should be open for the 2010 fishing season. What is at issue is actually the 2011 fishing year. January and February 2010 have already passed; however, the rulemaking for 2011 black sea bass management measures begins with a Council meeting in December 2010. The 2010 black sea bass management measures remain effective until superseded by revised measures. If the Council were to recommend a 2011 black sea bass fishing season that included January and February, there would be insufficient time to implement such a season through the rulemaking process.

There is a substantial issue that if NMFS opened Federal waters in January and February, effectively opening those months retroactively for 2010 and for 2011 for the reasons previously explained, state waters would not be open unless the Commission implemented comparable measures. In a situation such as this wherein Federal waters are open but state waters are closed, Federally permitted vessels are required to adhere to the more restrictive set of measures. The net effect of different fishing seasons in this instance, barring comparable Commission action, would prohibit Federally permitted vessels from fishing in either state or Federal waters.

NMFS has analyzed party/charter VTR data from 2000–2009. These data indicate that 58 unique vessels reported landing or discarding recreationally captured black sea bass within those years. Reported landings totaled 260,442 lb (118 mt) and reported discards totaled 26,073 lb (12 mt) for the time period, averaging 26,044 landed lb per year (12 mt). The average annual landings are less than 1.5 percent of the 2010 black sea bass recreational harvest limit. The commenters suggest that landings of this magnitude be considered *de minimis* and the fishery opened. No *de minimis* provision is included in the FMP and all mortality on the stock must be considered when establishing recreational management measures. In addition, no recommendation to open January and February was forwarded by either the Council or Commission.

VTRs are wholly self-reported by party and charter vessel operators and,

unlike commercial fisheries which have vessel-by-vessel landing data to validate the self-reported information, recreational party/charter vessels have no independent data validation mechanism. The For-Hire Survey (FHS) component of MRFSS does not yield a vessel-by-vessel independent assessment that is analogous to commercial landing weighouts. As a result, party/charter VTRs are not utilized in stock assessments or as a data source for management decisionmaking. They are informative to verify that there is indeed a January and February black sea bass fishery by Federally permitted vessels and the magnitude of the fishery would appear to be small. However, without a means to independently verify the information contained in the VTRs, there is no way to know how representative or accurate the reported data might be.

The reference to “no effective reduction” made by the commenter addresses a sampling deficiency in the current MRFSS design. Landings in MRFSS Wave 1 (January-February) are not monitored on a coastwide basis. However, pilot projects are underway to address this deficiency by sampling within Wave 1 as well as pilot studies to examine the efficacy of estimation procedures for when only small sample sizes can be obtained by the MRFSS survey. Both of these pilot projects may lead to additional fishery-independent information regarding Northeast Region recreational fishing in January and February. Because no sampling currently occurs, when calculating reduction or liberalization of landings for an upcoming fishing year is performed, the disposition of fishing in January and February contribute no net effect regardless of if the fishery is open or closed because of the lack of estimates for that time period.

Because the FMP does not provide for a *de minimis* season and there are clearly some magnitude of landings that occur in January and February, NMFS is disinclined to include those months in the 2010 black sea bass fishing season. The result of so doing would effectively ensure that those months would be open in 2011. No such recommendation was forwarded by either the Commission or Council. There is also the previously mentioned issue about creating a different set of measures for state and Federal waters.

*Comment 6:* One comment stated that NMFS uses MRFSS data inconsistently: Using the data to indicate overages and impose more restrictive measures, but dismissing the data when liberalization of measures can be implemented.

*Response:* NMFS has taken a consistent approach to utilization of MRFSS data as the best available information on recreational landings and effort. Through this rule, NMFS is implementing liberalized measures for black sea bass, consistent with the updated MRFSS data that indicate a lower percent reduction in 2010 landings are needed relative to 2009.

#### Classification

The Administrator, Northeast Region, NMFS, determined that this final rule implementing the 2010 summer flounder, scup, and black sea bass recreational management measures is necessary for the conservation and management of the summer flounder, scup, and black sea bass fisheries, and that it is consistent with the Magnuson-Stevens Act and other applicable laws.

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

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

#### Final Regulatory Flexibility Analysis

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

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

##### *A Summary of the Significant Issues Raised by the Public Comments in Response to the IRFA, a Summary of the Assessment of the Agency of Such Issues, and a Statement of Any Changes Made in the Proposed Rule as a Result of Such Comments*

A summary of the comments received and NMFS's responses thereto is contained in the preamble of this rule. None of those comments addressed specific information contained in the IRFA economic analysis or the economic impacts of the rule more generally. As outlined in the preamble, the black sea bass measures implemented by this rule were changed from those previously proposed. The change in measures was a direct result of comments received from the Commission, Council, and interested public.

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

The Council estimated that the management measures could affect any of the 948 vessels possessing a Federal charter/party permit for summer flounder, scup, and/or black sea bass in 2009, the most recent year for which complete permit data are available. However, only 328 vessels reported active participation in the recreational summer flounder, scup, and/or black sea bass fisheries in 2008, the most recent year for which complete fishing vessel trip reports (i.e., logbooks) are available.

*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*

*No-action alternatives.* The economic analysis conducted in support of this action assessed the impacts of the various management alternatives. In the EA, the no action alternative for each species is defined as the continuation of the management measures as codified for the 2009 fishing season. The no-action measures were analyzed in Alternative 2 for each species in the Council's EA/RIR/IRFA.

For summer flounder, the no-action (coastwide) alternative of a 19.5-inch (49.53-cm) minimum fish size, a two-fish possession limit, and a May 1–September 30 fishing season would achieve the mortality objectives required but would be more restrictive than necessary for most states.

The no-action alternative 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, is not expected to reduce landings from 2009 levels. If scup Alternative 2 were adopted for 2010, landings would be expected to be in the 4.0–million-lb (1,814-mt) range, thereby exceeding the 3.01–million-lb (1,366-mt) recreational harvest limit. This is inconsistent with the objectives of the FMP.

The no-action alternative for black sea bass (a 12.5-in (31.75-cm) minimum fish size, a 25-fish possession limit, and no closed fishing season) would result landings that exceed the 1.83–million lb (830-mt) recreational harvest limit for

2010 and, therefore, cannot be continued for the 2010 fishing season.

*Summer flounder alternatives.* In seeking to minimize the impact of recreational management measures (minimum fish size, possession limit, and fishing season) on small entities (i.e., Federal party/charter permit holders), NMFS is constrained to implementing measures that meet the conservation objectives of the FMP and Magnuson-Stevens Act.

The alternatives examined by the Council and forwarded for consideration by NMFS consisted of the preferred alternative of state-by-state conservation equivalency with a precautionary default backstop, and the non-preferred alternative of coastwide measures. These were alternatives 1 and 2, respectively, in the Council's EA/RIR/IRFA. These two alternatives were determined by the Council analyses to satisfy the 2010 conservation objectives for the recreational fishery, i.e., analysis indicated that implementation of either would constrain recreational landings within the 2010 recreational harvest limit. Therefore, either alternative recreational management system could be considered for implementation by NMFS, as the critical metric of satisfying the regulatory and statutory requirements would be met by either.

Next, NMFS considered the recommendation of both the Council and Commission. Both groups recommended implementation of state-by-state conservation equivalency, with a precautionary default backstop. The recommendations of both groups were not unanimous: Some Council and Commission members objected to the use of conservation equivalency. In fact, the State of New York filed litigation seeking relief from conservation equivalency implemented for both the 2008 and 2009 recreational summer flounder fisheries. The litigation for those cases, *State of New York et al. v. Locke et al. Civil Action Nos. 08-cv-2503 and 09-cv-3196*, remain unresolved by the U.S. District Court Eastern District of New York.

For NMFS to disapprove the Council's recommendation for conservation equivalency and substitute coastwide management measures, NMFS must reasonably demonstrate that the recommended measures are either inconsistent with applicable law or demonstrate that the conservation objectives of the FMP will not be achieved by implementing conservation equivalency. NMFS does not find the Council and Commission's recommendation to be inconsistent with the implementing regulations of the

FMP found at § 648.100 or the Magnuson-Stevens Act.

The additional metric for consideration applicable to the FRFA is examination of the economic impacts of the alternatives on small entities consistent with the stated objectives of applicable statutes. As previously stated, both conservation equivalency (alternative 1) and coastwide measures (alternative 2) are projected to achieve the conservation objectives in place for the 2010 summer flounder recreational fishery. However, the economic impacts of the two alternatives are not equal: The economic impacts on small entities under the coastwide measures management system would vary in comparison to the conservation equivalency system dependent on the specific state wherein the small entities operate.

Quantitative analysis of the economic impacts associated with conservation equivalency measures are not available. Because the development of the individual state measures occurs concurrent to the NMFS rulemaking process to ensure timely implementation of final measures for the 2010 recreational fishery, the specific measures implemented by states are not available for economic impact analyses. Instead, qualitative methods are utilized. The Council analysis concluded, and NMFS agrees, that conservation equivalency is expected to minimize impacts on small entities because individual states can develop specific summer flounder management measures that allow the fishery to operate during each state's critical fishing periods while still achieving conservation goals. To be clear, there are individual states whose conservation equivalency measures may have a more adverse impact to some small entities, dependent on the restrictions imposed by the Commission, than would coastwide measures. New York stands out as such a state. However, the one-size-fits-all approach of coastwide measures would impact a broader distribution of states and small entities.

NMFS is implementing the Council and Commission's recommended state-by-state conservation equivalency measures because: (1) NMFS finds no compelling reason to disapprove the Council and Commission's recommended 2010 management system, as the management measures contained in conservation equivalency are projected to provide the necessary restriction on recreational landings to prevent the recreational harvest limit from being exceeded; and (2) the net economic impact to small entities on a

coastwide basis are expected to be mitigated, to the extent practicable, for a much larger percentage of small entities. Data provided by the Council indicates that 328 federally permitted party/charter vessels landed some combination of summer flounder, scup, and black sea bass in 2008, the most recent year of available data. Within this total, 49 vessels, or 15 percent, were from New York. By inference, 85 percent of the small entities engaged in recreational fishing would be impacted less by the implementation of conservation equivalency, assuming that the impacts to New York small entities are indeed greater under conservation equivalency.

**Scup alternatives.** The options available for scup recreational fisheries management are constrained to a suite of minimum fish size, possession limit, and fishing season that achieves the annual conservation objective expressed through a recreational harvest limit on landings. As outlined in the preamble, the individual states have elected to implement a state-waters conservation equivalency system for the 2010 scup recreational fishery that has no comparable regulations for use in Federal waters. The Commission-adopted measures are not expected to constrain landings to the 2010 scup recreational harvest limit. Thus, the conservation objectives and the recreational harvest limit are likely to be compromised regardless of action taken for Federal waters. Very little of the scup recreational fishery occurs in Federal waters. Rather than close Federal waters to scup recreational fishing, NMFS is implementing the following measures: A 10.5-inch (26.67-cm) minimum fish size; a 10-fish per person possession limit; and an open season of June 6–September 26. These measures were not the most conservative proposed by the Council as they are projected to reduce 2010 landings by 29 percent from 2009 levels if comparable measures had been implemented in state waters.

Implementation of these measures offers an alternative to outright closure of Federal waters wherein all scup encountered would be required to be discarded. Instead, the limited amount of scup recreational fishing that occurs in Federal waters will have some overlap with the measures implemented for state waters by the Commission and fish that would have been discarded may be landed in limited numbers. These minor landings are not expected to add a substantial amount of recreational fishing mortality to the stock in 2010, nor is overfishing expected to occur as a result of either

the Federal or state measures implemented for 2010. Estimates from MRFSS indicate that the amount of scup recreationally harvested in Federal waters is typically 5 percent or less of the total annual take.

The measures of alternative 1 were also considered by NMFS. This would have resulted in an 11-inch (27.94-cm) minimum fish size, a longer season, and identical possession limit when compared to alternative 3. These measures did not synchronize well with the Commission measures and, while more conservative—achieving a projected 35 percent reduction in landings from 2009 levels if similar measures had been enacted in state waters—NMFS found that the minimal conservation benefit was outweighed by the lack of consistency with measures adopted for state waters. The impacts to charter and party vessels were similar between alternative 1 and 3 in the Council's analysis. Alternative 2 was not considered for implementation as it was not expected to effect any reduction in 2010 scup landing levels.

**Black sea bass alternatives.** Similar to both summer flounder and scup, the options available for black sea bass recreational management measures are constrained to selecting a suite of minimum fish size, possession limit, and fishing season measures that achieve the annual conservation objectives. In this case, this final rule is implementing measures that differ from those originally proposed. This rule implements the measures of alternative 4 (modified) contained in the EA/RIR/IRFA addendum: A 12.5-inch (31.75-cm) minimum fish size; a 25-fish possession limit; and May 22–October 11 and November 1–December 31 fishing seasons. This alternative provides the lowest associated economic impacts to small entities. Alternatives 1, 3, and 4 (unmodified) were projected to achieve the conservation objectives for the 2010 black sea bass fishery; however, given the evolution of increasingly improved data available during the recreational management measures development, these alternatives are now more conservative than necessary relative to the conservation objectives and have higher associated economic impacts than the measure being implemented through this rule.

#### *Small Entity Compliance Guide*

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

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

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

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: July 1, 2010

**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 amended as follows:

#### **PART 648—FISHERIES OF THE NORTHEASTERN UNITED STATES**

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

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

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

#### **§ 648.103 Minimum fish sizes.**

\* \* \* \* \*

(b) Unless otherwise specified pursuant to § 648.107, the minimum size for summer flounder is 19.5 inch (49.53 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.

\* \* \* \* \*

■ 3. 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 2010 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 - May 1 through September 30; minimum size - 21.5 inches (54.61 cm); and possession limit - two fish.

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

**§ 648.122 Season 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 specified in § 648.125(a), may not possess scup, except from June 6 through September 27. This time period may be adjusted pursuant to the procedures in § 648.120.

■ 5. In § 648.125, the first sentence of paragraph (a) is revised to read as follows:

**§ 648.122 Possession limit.**

(a) No person shall possess more than 10 scup in, or harvested from, the EEZ unless that person is the owner or operator of a fishing vessel issued a scup moratorium permit, or is issued a scup dealer permit.\*\*\*

\* \* \* \* \*

■ 6. 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 specified in § 648.145(a), may possess black sea bass from May 22 through October 11 and November 1 through December 31, unless this time period is adjusted pursuant to the procedures in § 648.140.

[FR Doc. 2010-16651 Filed 7-7-10; 8:45 am]

BILLING CODE 3510-22-S

**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

**50 CFR Part 660**

[Docket No. 100617272-0271-02]

RIN 0648-AY94

**Magnuson-Stevens Act Provisions; Fisheries Off West Coast States; Pacific Coast Groundfish Fishery; Biennial Specifications and Management Measures**

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

**ACTION:** Final rule; harvest specifications; correction.

**SUMMARY:** This final rule revises the optimum yields in the 2010 Specifications for darkblotched rockfish, cowcod, and yelloweye rockfish. The U.S. District Court for the Northern District of California issued an Order on April 29, 2010, vacating the 2009–2010 specifications for those three species, and replaced the Specifications with the most recent optimum yields that were specified for 2007–2008. This rule amends the regulatory requirements for these three species in accordance with the court's order. This rule also corrects a technical error in a table establishing the 2010 canary rockfish optimum yield.

**DATES:** Effective July 2, 2010.

**FOR FURTHER INFORMATION CONTACT:** Gretchen Hanshew (Northwest Region, NMFS), phone: 206-526-6147, fax: 206-526-6736 and e-mail: [gretchen.hanshew@noaa.gov](mailto:gretchen.hanshew@noaa.gov).

**SUPPLEMENTARY INFORMATION:**

**Electronic Access**

This final rule is accessible via the Internet at the Office of the **Federal Register's** Web site at <http://www.gpoaccess.gov/fr/index.html>. Background information and documents are available at the Pacific Fishery Management Council's website at <http://www.pcouncil.org/>. Background information and documents are also available at the NMFS Northwest Region Web site at <http://www.nwr.noaa.gov/Groundfish-Halibut/Groundfish-Fishery-Management/index.cfm>.

Copies of the final environmental impact statement (FEIS) for the 2009–2010 Groundfish Specifications and Management Measures are available from Donald McIsaac, Executive Director, Pacific Fishery Management Council (Council), 7700 NE.

Ambassador Place, Portland, OR 97220, phone: 503-820-2280.

Copies of additional reports referred to in this document may also be obtained from the Council. Copies of the Record of Decision (ROD), final regulatory flexibility analysis (FRFA), and the Small Entity Compliance Guide are available from William W. Stelle, Jr., Administrator, Northwest Region (Regional Administrator), NMFS, 7600 Sand Point Way, NE., Seattle, WA 98115-0070.

**Background**

On December 31, 2008, NMFS published a proposed rule to implement the 2009–2010 specifications and management measures for the Pacific Coast groundfish fishery (73 FR 80516), including, among other species, darkblotched rockfish, cowcod, and yelloweye rockfish. A final rule was published on March 6, 2009 (74 FR 9874), which codified the specifications and management measures in the CFR (50 CFR part 660, subpart G). That action set the 2009–2010 harvest specifications and management measures for groundfish taken in the U.S. Exclusive Economic Zone (EEZ) off the coasts of Washington, Oregon, and California, and revised rebuilding plans for four of seven overfished species, consistent with the Magnuson-Stevens Fishery Conservation and Management Act (MSA) and the Pacific Coast Groundfish Fishery Management Plan (FMP). The existing and revised rebuilding plans were consistent with Amendment 16-4 to the FMP, and were designed to comply with the rebuilding requirements of the MSA.

In response to the latest in a series of complaints filed in *Natural Resources Defense Council v. Locke*, Civil Action No. C 01-0421 JL, challenging the rebuilding provisions in the FMP, the U.S. District Court for the Northern District of California vacated the 2009 and 2010 specifications for darkblotched rockfish, cowcod, and yelloweye rockfish. Order on Remedy, Dkt. No. 342 (April 29, 2010) (Opinion). The Court held that NMFS violated National Standard 2 of the MSA by “failing to use the best scientific information available on the economic status of fishing communities in their 2009–2010 Biennial specifications and Management Measures for the Pacific Coast Groundfish Fishery (2009–2010 Specifications).” Further, the Court held that NMFS established “rebuilding plans for darkblotched rockfish, cowcod, and yelloweye rockfish in the 2009–2010 Specifications that do not rebuild those species in time periods that are ‘as short