

Report and Order, Measurement Standards for Digital Television Signals Pursuant to the Satellite Home Viewer Extension and Reauthorization Act of 2004, ET Docket No. 06–94; FCC 10–195. The Report and Order adopted rules establishing measurement procedures for determining the strength of a digital broadcast television (DTV) signal at any specific location. These procedures will be used for determining whether households are eligible to receive distant DTV network signals retransmitted by satellite carriers, pursuant to the provisions of the Satellite Television Extension and Localism Act of 2010 (STELA). The Report and Order implements DTV signal measurement procedures proposed in the Commission's Notice of Proposed Rulemaking (SHERVA NPRM) and Further Notice of Proposed Rulemaking (STELA FNPRM) in this proceeding with minor modifications.

47 CFR 73.686 describes a method for measuring signal strength at a household so that the satellite and broadcast industries and consumers would have a uniform method for making an actual determination of the signal strength that a household received. The information gathered as part of the Grade B signal strength tests will be used to indicate whether consumers are "unserved" by over-the-air network signals. The written records of test results will be made after testing and predicting the strength of a television station's signal. Parties impacted by the test results will be consumers; parties using the written test results will primarily be the satellite and broadcasting industries.

Federal Communications Commission.

**Marlene H. Dortch,**

*Secretary, Office of the Secretary, Office of Managing Director.*

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 648

[Docket No. 110222150–1280–02]

RIN 0648–BA92

#### Fisheries of the Northeastern United States; Recreational Management Measures for the Summer Flounder, Scup, and Black Sea Bass Fisheries; 2011 Scup Specifications; Fishing Year 2011

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

**ACTION:** Final rule.

**SUMMARY:** NMFS implements an increase to the scup commercial and recreational landing allowances for 2011 (specifications) and management measures for the 2011 summer flounder, scup, and black sea bass recreational fisheries in Federal waters. 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 the scup increase is to enable greater commercial and recreational harvest opportunities while preventing overfishing on the scup stock. Recreational management measures are similarly intended to ensure that overfishing the summer flounder, scup, and black sea bass resources in 2011 is unlikely to occur.

**DATES:** Effective August 1, 2011.

**ADDRESSES:** Copies of the scup harvest level increase Supplement Environmental Assessment (SEA) to the 2011 specifications and 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 both the scup specifications increase and the recreational management measures are available from Dr. Christopher M. Moore, Executive Director, Mid-Atlantic Fishery Management Council, Suite 201, 800 North State Street, Dover, DE 19901. 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:

### General 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 states 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 Federal permits for summer flounder, scup, and/or black sea bass, regardless of where they fish.

A proposed rule to implement the 2011 scup specifications increase and Federal recreational measures for the 2011 summer flounder, scup, and black sea bass fisheries was published on April 21, 2011 (76 FR 22350). Additional background and information is provided in that rule and is not repeated here.

### 2011 Scup Specifications Increase

This rule implements the scup increase proposed by NMFS in the April 21, 2011, proposed rule: A Total Allowable Catch (TAC) of 31.92 million lb (14,479 mt), increased from the current TAC of 24.10 million lb (10,932 mt); a Total Allowable Landings (TAL) of 26.50 million lb (12,020 mt), increased from 20.0 million lb (9,072 mt); a commercial quota of 20.36 million lb (9,235 mt), increased from 15.29 million lb (6,936 mt); and a recreational harvest limit of 5.74 million lb (2,604 mt), increased from 4.30 million lb (1,956 mt). Because the 2011 research set-aside (RSA) of 396,500 lb (180 mt) has already been awarded for scup, no change to the RSA level will occur as a result of the increased scup specifications.

Table 1 contains the scup commercial quota period information that results from the scup specification increase. Information on the amount of unused Winter I quota to be rolled over to Winter II, including any change to Winter II possession limits that results from the transfer, will be published in the **Federal Register** in July 2011.

TABLE 1—FINAL REVISED COMMERCIAL SCUP QUOTA ALLOCATIONS FOR 2011 BY QUOTA PERIOD

Quota period	Percent share	Total allowable catch		Estimated discards		Initial quota		Adjusted quota less RSA	
		lb	mt	lb	mt	lb	mt	lb	mt
Winter I .....	45.11	11,231,307	5,094	1,907,070	865	9,324,237	4,229	9,184,725	4,166
Summer .....	38.95	9,697,615	4,399	1,646,650	747	8,050,965	3,652	7,930,504	3,597
Winter II .....	15.94	3,968,677	1,800	673,879	306	3,294,798	1,494	3,245,500	1,472
Total ..	100.0	24,897,600	11,293	4,227,600	1,918	20,670,000	9,376	20,360,730	9,235

## 2011 Recreational Management Measures

### Background

Additional discussion on the development of the recreational management measures appeared in the preamble of the proposed rule and is not repeated here.

The 2011 coastwide recreational harvest limits were previously established by rulemaking conducted in late 2010 (75 FR 81498; December 28, 2010). The 2011 recreational harvest limits established by the December 28, 2010, final rule are as follows: Summer flounder, 11.58 million lb (5,254 mt); scup, 4.3 million lb (1,956 mt); and black sea bass, 1.84 million lb (835 mt). However, this rule implements an increase to the scup specifications, which increases the recreational harvest limit to 5.74 million lb (2,604 mt). Recreational harvest limits are the target objectives or "quotas" established for the summer flounder, scup, and black sea bass recreational fisheries. The management measures (*i.e.*, minimum fish size requirements, angler possession limits, and fishing seasons) established by this rule are all designed to ensure that recreational landings do not exceed the recreational harvest limits.

NMFS is implementing, through this rule, management measures to apply in the Federal waters of the EEZ and to all federally permitted party/charter vessels with applicable summer flounder, scup, and/or black sea bass permits regardless of where they fish during the 2011 fishing year. The management measures (*i.e.*, minimum fish size requirements, angler possession limits, and fishing seasons) established by this rule are all designed to ensure that recreational landings do not exceed the recreational harvest limits. The management measures established by this rule are as follows: For summer flounder, use of state-by-state conservation equivalency measures, which is the status quo management system; for scup, a 10.5-inch (26.67-cm) minimum fish size, a 10-fish per person possession limit, and

an open season of June 6 through September 26, which are the status quo measures; and, for black sea bass, a 12.5-inch (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, which are also the status quo measures. More detail on these proposed measures is provided in the following sections.

Federal permit holders are reminded that, as a condition of their Federal permit, they must abide by the Federal measures, even if fishing in state waters. In addition, in instances where the state-implemented measures are different than the Federal measures, federally permitted vessels must adhere to the more restrictive of the two measures. This will be applicable for both the 2011 scup and black sea bass recreational fisheries.

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 tendrils. All possession limits discussed below are per person.

### Summer Flounder Recreational Management Measures

NMFS is implementing, through this rule, conservation equivalency as the management approach for use in the 2011 summer flounder recreational fishery. NMFS implemented Framework Adjustment 2 to the FMP on July 29, 2001 (66 FR 36208), to permit the use of conservation equivalency to manage the recreational summer flounder fishery. Conservation equivalency allows each state to establish its own recreational management measures to achieve its state harvest limit partitioned from the coastwide recreational harvest limit by the Commission. The combined effect of all of the states' management measures achieves the same level of conservation as would Federal coastwide measures, hence the term conservation equivalency. This means that minimum

fish sizes, possession limits, and fishing seasons developed and adopted by the individual states from MA to NC will be utilized as the Federal water measures for 2011.

The Commission notified the NMFS Northeast Regional Administrator by letter dated May 19, 2011, that the 2011 summer flounder recreational fishery management programs (*i.e.*, minimum fish size, possession limit, and fishing seasons) implemented by the states from MA to NC have been reviewed by the Commission's Technical Committee (TC) 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 2011 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 2011 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 2011. For clarity, the 2011 summer flounder management measures adopted by the individual states vary according to the state of landing, as specified in Table 2.

TABLE 2—2011 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		
Massachusetts .....	17.5	44.45	5	May 22–September 30.
Rhode Island .....	18.5	46.99	7	May 1–December 31.
Connecticut .....	18.5	46.99	3	May 15–September 5.
New York .....	20.5	52.07	3	May 1–September 30.
New Jersey .....	18.0	45.72	8	May 7–September 25.
Delaware .....	18.0	45.72	4	January 1–October 23.
Maryland .....	18.0	45.72	3	April 16–November 30.
Virginia .....	17.5	44.45	4	January 1–December 31.
North Carolina .....	15.0	38.10	6	January 1–December 31.

Note: At 40 designated shore sites in CT, anglers may keep 1 fish at 17.0 inches (43.18 cm), May 15–September 5.

*Scup Recreational Management Measures*

As outlined in the April 21, 2011, proposed rule, NMFS is retaining the currently codified scup recreational management measures for the 2011 fishing year. These are the status quo measures of 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 (*i.e.*, closed seasons from January 1–June 5 and again from September 27–December 31).

These measures, in conjunction with the regional approach being applied to state waters through the Commission, are expected to constrain landings to the 5.74-million-lb (2,604 mt) recreational harvest limit being concurrently implemented by this rule.

NMFS acknowledges that the Commission will continue managing the recreational scup fishery through a Commission-based conservation equivalency program that has no comparable measures in the Federal FMP. Thus, recreational management measures will differ between state and Federal waters in 2011. Historically, very little of the scup recreational

harvest comes from Federal waters; the scup recreational harvest from Federal waters for 2009 was approximately 2 percent of the total coastwide landings.

*Black Sea Bass Recreational Management Measures*

NMFS is retaining the currently codified black sea bass measures for use in Federal waters during the 2011 fishery (*i.e.*, the status quo). These measures are a 12.5-in (31.75-cm) minimum fish size, 25-fish per person possession limit, and May 22–October 11 and November 1–December 31 fishing seasons. Measures for state waters will vary by state, as described later in this section. NMFS had proposed additional, more restrictive measures for the 2011 fishing year (*i.e.*, a 13.0-inch (33.02-cm) minimum fish size, a 25-fish per person possession limit, and open seasons of July 1 through October 1 and November 1 through December 31); however, these measures are no longer necessary as the Commission has developed, approved, and implemented measures for state waters that, when paired with the status quo measures in Federal waters, achieve the required management objectives for

2011. NMFS described in the April 21, 2011, proposed rule the circumstances that might lead to either set of black sea bass measures being approved for 2011. That information is not repeated here.

The Commission notified the NMFS Northeast Regional Administrator by letter dated May 19, 2011, that the 2011 black sea bass recreational fishery management programs (*i.e.*, minimum fish size, possession limit, and fishing seasons) implemented by the states from MA to NC have been reviewed by the TC and approved for use by the Commission’s Black Sea Bass Management Board under Addendum XXI to the Commission’s black sea bass management plan. The correspondence indicates that the Commission-approved management programs, when paired with status quo measures in Federal waters, are projected to restrict 2011 recreational black sea bass coastwide landings to the 1.84-million-lb (835 mt) recreational harvest limit. Recreational management measures between state and Federal waters may differ as a result of the Commission’s Addendum XXI measures, depending on the measures implemented by the individual states as outlined in Table 3.

TABLE 3—BLACK SEA BASS MANAGEMENT MEASURES IMPLEMENTED BY NMFS FOR FEDERAL WATERS AND THE COMMISSION FOR STATE WATERS, 2011

	Minimum fish size		Possession limit (number of fish)	Fishing season
	inches	cm		
<b>Federal Measures Implemented by NMFS for Federal Waters</b>				
EEZ .....	12.5	31.75	25	May 22–October 11 and November 1–December 31.
<b>State Measures Implemented by the Commission for State Waters</b>				
State:				
Massachusetts .....	14.0	35.36	10	May 22–October 11.
Rhode Island .....	13.0	33.02	12	July 11–December 31.

TABLE 3—BLACK SEA BASS MANAGEMENT MEASURES IMPLEMENTED BY NMFS FOR FEDERAL WATERS AND THE COMMISSION FOR STATE WATERS, 2011—Continued

	Minimum fish size		Possession limit (number of fish)	Fishing season
	inches	cm		
Connecticut .....	13.0	33.02	25	July 1–October 11 and November 1–December 31.
New York .....	13.0	33.02	10	June 13–October 1 and November 1–December 31.
New Jersey .....	12.5	31.75	25	May 28–September 11 and November 1–December 31.
Delaware .....	12.5	31.75	25	May 22–October 11 and November 1–December 31.
Maryland .....	12.5	31.75	25	May 22–October 11 and November 1–December 31.
Virginia .....	12.5	31.75	25	May 22–October 11 and November 1–December 31.
North Carolina .....	12.5	31.75	25	July 1–September 25 and November 1–December 31.

Because the Commission-based measures implemented by the states are different than the Federal water measures, Federal permit holders are required to adhere to the more restrictive set of measures irrespective of if fishing in state or Federal waters. Similarly, private anglers must adhere to the recreational measures implemented by the state in which the fish will be landed as all the state-implemented measures place restrictions on possession as opposed to landings.

For additional information on state-implemented management measures, please contact the marine fisheries management agency for the state in question or the Commission (<http://www.asmfc.org>; (703) 842–0740).

**Comments and Responses**

Three comment letters were received regarding the proposed scup quota increase and recreational management measures. Two of these comments pertained to measures being proposed by the South Atlantic Fishery Management Council for managing the black sea bass stock south of Cape Hatteras, NC, and thus are not applicable to this rulemaking. The other comment letter raised concerns about the scup allocation between the recreational and commercial sector, as well as the black sea bass measures proposed for 2011. Comments that require responses are addressed, as follows:

*Comment:* One commenter stated that the increased scup quota would only permit greater opportunity for the commercial fishery sector, as the increase in quota would only permit the use of status quo scup recreational management measures. The commenter

further stated that the allocation between the two sectors should be shifted to provide more opportunity for the recreational fishery sector.

The same commenter also stated that the required reduction in black sea bass landings in 2011 from 2010 levels should be dispersed over an unspecified period of time. The commenter also expressed a preference for reducing the black sea bass possession limit presumably in lieu of changing either the fishing season or increasing the minimum fish size from 2010 levels.

*Response:* The increased scup quota implemented by this rule enables the use of status quo state and Federal recreational management measures for 2011. Had the increase in quota not been implemented for 2011, a reduction in scup recreational landings would have been required because the 2010 recreational fishery substantially exceeded the recreational harvest limit in place. The statement that harvest opportunity is increased for both sectors is not in reference to the potential change from 2010 to 2011, but rather, is applicable relative to the opportunity that would have been available had the quota increase not been implemented. The preliminary analyses conducted by the Council in November 2010 indicated that a 12-percent reduction in recreational landings for 2011 from 2010 levels would have been required, had the recreational harvest limit not been increased from 4.3 million lb (1,956 mt) to 5.74 million lb (2,604 mt). Thus, had the recreational harvest limit not been made available for 2011, scup recreational management measures would have been more restrictive than the measures implemented by this rule. Those restrictions would have

decreased recreational harvest opportunity.

With respect to the allocation of scup between the recreational and commercial fishing sectors, the current allocation split of 78 percent to the commercial fishery, and 22 percent to the recreational fishery, is specified in the FMP. This allocation cannot be changed through either the Council’s annual specification or recreational management measures processes, nor is it possible to modify the allocation structure through a FMP framework adjustment process. An amendment to the FMP would be required to enact any allocation change. To date, the Council has not developed or recommended to NMFS any changes to the scup allocation.

This rule retains the status quo black sea bass measures of a 25-fish per person possession limit, and open season of July 1–October 1 and November 1–December 31 for Federal waters in 2011. State measures implemented through the Commission’s process for 2011 vary (see Table 3 for more information). Substantial discussion occurred during the December 2010 joint Council and Commission meeting about reducing the per angler possession limit from 25 fish to reduce landings in 2011 from 2010 levels. Because the available landings data for black sea bass indicate that most anglers retain far fewer than 25 fish (slightly over 90 percent of all anglers land 6 or fewer black sea bass), any reduction in possession limit would need to be substantial to have any effective reduction in landings. For example, if the possession limit were reduced by 15 fish from 25 to 10, the net reduction in projected 2011 landings from 2010 levels would be less than 3

percent, because most anglers do not keep more than 5–6 fish.

### Classification

The Administrator, Northeast Region, NMFS, determined that this final rule implementing the increased 2011 scup specifications and 2011 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 SEA are available from the Council and NMFS (see **ADDRESSES**). A FRFA was previously completed in conjunction with the final rule that implemented the initial scup specifications for 2011 (75 FR 81498; December 28, 2010). This FRFA supplements the necessary information pertaining to the increases in the scup specifications implemented by this rule and provides the necessary information with respect to the summer flounder, scup, and black sea bass recreational management measures.

### Final Regulatory Flexibility Analysis

#### *Statement of Objective and Need*

A description of the reasons why the scup specifications are being increased, why the 2011 recreational management measures for summer flounder, scup, and black sea bass are being implemented, and the objectives of and legal basis for this final rule implementing both actions 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 are 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 increased scup specifications or recreational management measures more generally. As described in the preamble, the black sea bass measures implemented by this rule were changed from those previously proposed.

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

The scup specifications increase could affect any of the 398 vessels possessing a Federal moratorium or party/charter permit in 2009, the most recent year for which complete permit data are available. The recreational management measures could affect any of the 980 vessels possessing a Federal charter/party permit for summer flounder, scup, and/or black sea bass in 2009. However, only 348 vessels reported active participation in the 2009 recreational summer flounder, scup, and/or black sea bass fisheries.

#### *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*

##### Scup Specifications

A FRFA was previously prepared in conjunction with the action that implemented the initial scup 2011 specifications (75 FR 81498; December 28, 2010). Information from that FRFA remains applicable here with respect to the scup specification increase: The economic impact analyses on the various specification levels proposed by the Council for implementation by NMFS were evaluated solely on the different levels of quota specified in the alternatives. The ability of NMFS to minimize economic impacts when implementing specifications is constrained to approving quota levels (*i.e.*, TAC and TAL) that provide the maximum availability of fish while still ensuring that the required objectives and directives of the FMP, its implementing regulations, and the Magnuson-Stevens Act are met. To aid in this process, the Council's Scientific and Statistical Committee (SSC) made recommendations for the 2011 Acceptable Biological Catch (ABC) level for all three stocks, including scup. The ABC is a catch level of a stock's annual catch that accounts for the scientific

uncertainty in the estimate of the overfishing level (OFL) and any other scientific uncertainty and, as such, is designed to provide a low probability of overfishing a stock in a given year for which ABC is recommended.

The economic analysis for the 2011 specifications, including the increased scup specifications, assessed the impacts for quota alternatives that achieve the aforementioned objectives. The no action alternative, wherein no quotas are established for 2011, was excluded from analysis because it is not consistent with the goals and objectives of the FMP and the Magnuson-Stevens Act. Alternative 2 from the Council's analysis contained the most restrictive TAL options (*i.e.*, the lowest catch levels; a TAL of 14.11 million lb (6,400 mt)) and was not preferred by the Council or implemented by NMFS because other alternatives had lower impacts on small entities while achieving the stated objectives of the 2011 specification process. Alternative 3 contained the least restrictive quotas (a TAL of 28.96 million lb (13,136 mt)) and produced the smallest impact on small entities. However, the respective quotas under Alternative 3 were inconsistent with the SSC's catch level recommendations, as they exceeded the ABC recommendations provided by the SSC. Because the Alternative 3 measures were inconsistent with the Magnuson-Stevens Act requirements, they could not be implemented for 2011, despite having the lowest associated impact on small entities.

In December 2010, NMFS implemented TALs contained in the Council's Alternative 1 (summer flounder, 29.48 million lb (13,372 mt); scup, 20.0 million lb (9,072 mt); and black sea bass, 3.6 million lb (1,633 mt)), the Council's preferred alternatives at the time, which consisted of the quota alternatives that paired the lowest economic impacts to small entities and meet the required objectives of the FMP and the Magnuson-Stevens Act. However, in the interim since that action, the Council supplemented its preferred scup specification measures as previously described. This new preferred alternative, designated Alternative 1B and implemented by this rule, provides an increase in the scup TAC from 29.4 million lb (13,372 million lb) to 31.92 million lb (14,479 mt). This TAC increase would be 8 percent below the maximum sustainable yield (MSY) level for scup, and considerably below the 2011 ABC of 51.70 million lb (23,451 mt) recommended by the Council's SSC. Thus, it is both consistent with the Magnuson-Stevens Act requirements,

the FMP, the SSC's recommendation, and provides the lowest impacts on small entities by providing the maximum opportunity to harvest scup among the various specification alternatives considered for 2011. The increased opportunity afforded by the increased scup specifications is expected to produce positive socioeconomic impacts relative to the previously implemented specification level.

#### Recreational Management Measures

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. Management measures must provide sufficient constraints on recreational landings, such that the established recreational harvest limits have a low likelihood of being exceeded, which might lead to overfishing the stock. This rule maintains the status quo recreational management measures for all three species in Federal waters.

*Summer flounder alternatives.* The alternatives examined by the Council and forwarded for consideration by NMFS consisted of the preferred alternative of state-by-state conservation equivalency (see Table 2 for measures) with a precautionary default backstop (status quo), and the non-preferred alternative of coastwide measures (an 18.5-inch (46.99-cm) minimum fish size, a 2-fish per person possession limit, and open season from May 1 through September 30). These were alternatives 1 and 2, respectively, in the Council's EA/RIR/IRFA. Analysis of these two alternatives were determined by the Council to provide a high probability of constraining recreational landings to levels at or below the 2011 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 likely 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, stating a preference for coastwide measures.

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 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 at § 648.100 or the Magnuson-Stevens Act, including the 10 National Standards.

The additional metric for consideration by NMFS, 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 for the 2011 summer flounder recreational fishery. However, the economic impacts of the two alternatives are not projected to be equal in the Council's analyses: 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 analyses of the economic impacts associated with conservation equivalency measures are not available. This is because the development of the individual state measures occurs concurrent to the NMFS rulemaking process to ensure timely implementation of final measures for the 2011 recreational fishery; thus, the specific measures implemented by states are not available for economic impact analyses. Instead, qualitative methods were utilized by the Council to assess the relative impact of conservation equivalency (alternative 1) to coastwide measures (alternative 2). 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, depending on the restrictions imposed by the Commission, than would coastwide measures. However, the one-

size-fits-all approach of coastwide measures would negatively impact a broader distribution of states and the small entities that fish from those states.

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 2011 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.

*Scup alternatives.* As outlined in the preamble, the individual states have elected to implement a state-waters conservation equivalency system for the 2011 scup recreational fishery that has no comparable regulations for use in Federal waters. NMFS is retaining the measures currently codified as the Federal water measures for the 2011 fishing year: 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. Similar to the summer flounder discussion, this suite of scup measures (alternative 1) provides the minimum impact on small entities from the alternatives available by providing the maximum fishing opportunity in Federal waters and meets the requirements of the Magnuson-Stevens Act, the FMP, and achieves the conservation objectives for 2011. Alternative 1 for a 10.5-inch (26.67-cm) minimum fish size, 15-fish per person possession limit, and open seasons of January 1 through February 28 and October 1 through October 31, and Alternative 3 for an 11.0-inch (27.94-cm) minimum fish size, 10-fish per person possession limit, and open season of May 24 through September 26 contained measures that had higher impacts on small entities fishing in Federal waters, as both contained more restrictive measures than would be necessary to satisfy the management objectives.

*Black sea bass alternatives.* This final rule is implementing measures that differ from those originally proposed. As previously stated in the preamble, individual states have developed and implemented measures for use in state waters. This rule retains the status quo measures of alternative 2 contained in the Council's EA/RIR/IRFA: 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 for Federal waters. This alternative provides the lowest associated economic impacts to small entities of the measures considered for Federal waters that also meets the statutory and regulatory requirements for the 2011 fishery. Alternative 1 (a 13.0-inch (33.02-cm) minimum fish size, a 25-fish per person possession limit, and open season of July 1 through October 1 and November 1 through December 31), originally proposed by NMFS for 2011, was projected to achieve the conservation objectives for the 2011 black sea bass fishery; however, the landings level reduction imposed by the alternative's measures is more restrictive than necessary. The Alternative 3 measures proposed (12.5-inch (31.75-cm) minimum fish size, a 25-fish per person possession limit, and open seasons of January 1 through December 31) were not projected to achieve the necessary reduction in landings for 2011 and, as such, could not be implemented by NMFS.

#### *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 Web site: <http://www.nero.noaa.gov>.

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

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: June 27, 2011.

**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 18.5 inches (46.99 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 2011 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—20.0 inches (50.80 cm); and possession limit—two fish.

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#### **DEPARTMENT OF COMMERCE**

#### **National Oceanic and Atmospheric Administration**

#### **50 CFR Part 660**

**Docket No. 100804324–1265–02]**

**RIN 0648–BB21**

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

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

**ACTION:** Final rule; inseason adjustments to biennial groundfish management measures; request for comments.

**SUMMARY:** This final rule announces inseason changes to management measures in the commercial Pacific Coast groundfish fisheries. These actions, which are authorized by the Pacific Coast Groundfish Fishery Management Plan (FMP), are intended to allow fisheries to access more abundant groundfish stocks while protecting overfished and depleted stocks.

**DATES:** Effective 0001 hours (local time) July 1, 2011. Comments on this final rule must be received no later than 5 p.m., local time on August 1, 2011.

**ADDRESSES:** You may submit comments, identified by RIN 0648–BB21 by any one of the following methods:

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

- **Fax:** 206–526–6736, Attn: Gretchen Hanshew.

- **Mail:** William W. Stelle, Jr., Regional Administrator, Northwest Region, NMFS, 7600 Sand Point Way NE., Seattle, WA 98115–0070, Attn: Gretchen Hanshew.

**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 (enter N/A in the required fields, if you wish to remain anonymous). You may submit