**§ 1003.106 Determinations regarding the amount of the penalty and assessment.**

(a) * * *

(5) In determining the appropriate amount of any penalty in accordance with § 1003.103(f), the OIG will consider, as appropriate—

* * * * *

(vii) The extent to which the failure to provide medically necessary services could be attributed to a prohibited inducement to reduce or limit services under a physician incentive plan and the harm to the enrollee which resulted or could have resulted from such failure. It would be considered an aggravating factor if the contracting organization knowingly or routinely engaged in any prohibited practice which acted as an inducement to reduce or limit medically necessary services provided with respect to a specific enrollee in the organization;

* * * * *

(Catalog of Federal Domestic Assistance Program No. 93.733—Medicare—Hospital Insurance Program; No. 93.774—Medicare Supplementary Medical Insurance Program; No. 93.778—Medical Assistance Program)

Dated: April 20, 1995.

Bruce C. Vladeck,

*Administrator, Health Care Financing Administration.*

Dated: May 19, 1995.

June G. Brown,

*Inspector General, Department of Health and Human Services.*

Dated: November 2, 1995.

Donna E. Shalala,

*Secretary.*

[FR Doc. 96–7228 Filed 3–25–96; 8:45 am]

**BILLING CODE 4120–01–P**

## UTAH RECLAMATION MITIGATION AND CONSERVATION COMMISSION

## 43 CFR Part 10001

## Operating Procedures

**AGENCY:** Utah Reclamation Mitigation and Conservation Commission.

**ACTION:** Final rule.

**SUMMARY:** This part establishes the final rule that describes the operating procedures of the agency established by the Central Utah Project Completion Act. The rule meets the requirement of the Administrative Procedure Act that directs each agency to publish its organizational structure and functions in the Federal Register for the guidance of the public.

**EFFECTIVE DATE:** February 5, 1996.

**FOR FURTHER INFORMATION CONTACT:** Michael C. Weland, Executive Director, Utah Reclamation Mitigation and Conservation Commission, 111 East Broadway, Suite 310, Salt Lake City, Utah, 84111. Telephone (801) 524–3146.

**SUPPLEMENTARY INFORMATION:** The final rule was adopted by the Utah Reclamation Mitigation and Conservation Commission in public session February 5, 1996.

List of Subjects in 43 CFR Part 10001

Administrative practice and procedures, Organization and functions (Government Agencies).

Chapter III of title 43 of the Code of Federal Regulations is amended to add new part as follows:

## PART 10001—OPERATING PROCEDURES

Sec.

10001.1 Commissioners.

10001.2 Meetings.

Authority: Sec. 301, Pub. L. 102–575, 106 Stat 4625.

**§10001.1 Commissioners.**

(a) Three members of the Commission shall constitute a quorum.

(b) The affirmative vote of at least three members of the Commission in attendance at a meeting at which a quorum is present, on any matter within their duties and responsibilities, shall constitute the Commission's action, except as otherwise provided herein.

(1) The Commission may not take action on a matter not appearing on the published agenda for a particular meeting except upon the unanimous vote of the members present.

(2) Any proposed Commission action must be moved by a Commission member and seconded by another member before a vote may be taken by the Commission. Other questions of procedure will be decided by reference to generally accepted principles of parliamentary procedure, as determined by the Chairman or the Chairman's designee.

(3) A member who is present at a meeting of the Commission at which action on any matter is taken shall be presumed to have assented to the action taken unless that member's abstention or dissent shall have been entered into the minutes of the meeting or unless that member shall file a written dissent to such action with the Chairman before the adjournment of the meeting. A written dissent shall not apply to a member who voted in favor of such action.

(4) In a case where a member is recused due to a conflict in a particular matter, the member shall not be present during, nor take any part in, the proceedings on that matter and shall not be counted as having voted.

(5) No member of the Commission may appoint another individual, including another member, by proxy or otherwise, to assume his or her responsibilities or vote on his or her behalf as a member of the Commission.

(c) There shall be one office of Chairman of the Commission to be held by a member of the Commission.

(1) The Chairman shall be elected by an affirmative vote by at least three members of the Commission and shall hold office for one year, commencing immediately upon election, or until resignation from the office or the Commission.

(2) The Chairman shall be the presiding officer of the Commission and shall perform the following duties and responsibilities:

(i) Preside at all meetings of the Commission;

(ii) Vote on all matters requiring Commission action;

(iii) Execute all contracts, agreements, resolutions, and other documents approved and authorized by the Commission, except as otherwise delegated by the Commission;

(iv) Preside at ceremonial activities sponsored by the Commission and represent the Commission at other ceremonial activities upon invitation;

(v) Appoint any other member of the Commission to serve as Acting Chairman in the absence of the Chairman and Vice-Chairman; and

(vi) Serve as spokesperson for the Commission, unless otherwise directed by the Commission. When the Chairman or any other member of the Commission speaks as an individual member of the Commission, the Chairman or member shall state when he or she is representing his or her own views and not the consensus of the Commission as a whole.

(3) A member may not serve as Chairman for more than four consecutive full one-year terms.

(4) Whenever a vacancy occurs in the office of Chairman, the members shall at their next meeting elect a successor to fill the vacancy for the unexpired term.

(d) The Commission may, upon an affirmative vote by at least three members, elect one of its members to serve as Vice-Chairman.

(1) The Vice-Chairman, whenever such office may from time to time be established, shall perform all of the duties of the Chairman of the Commission when the Chairman is unable for any reason to act or when for any reason there is a vacancy in the office of Chairman.

(2) The term of office for the Vice-Chairman shall be one year, commencing immediately upon election unless otherwise established by the Commission.

(e) The Chairman or Vice-Chairman may be removed from office by an affirmative vote of at least four members of the Commission whenever in its judgment the best interests of the Commission would be served.

(f) Except as provided in paragraph (f)(1), of this section members of the Commission shall each be paid at a rate equal to the daily equivalent of the maximum of the annual rate of basic pay in effect for grade GS–15 of the General Schedule for each day (including travel time) during which they are engaged in the actual performance of duties vested in the Commission.

(1) Members of the Commission who are full-time officers or employees of the United States or the State of Utah shall receive no additional pay by reason of their service on the Commission.

(2) Members of the Commission who are eligible for compensation under this paragraph shall be paid for the performance of the following activities:

(i) Preparation for and attendance at regularly scheduled meetings of the Commission or Commission meetings called pursuant to § 10001.2(a);

(ii) Preparation for and attendance at Commission inspections of mitigation and conservation projects;

(iii) Preparation for and attendance at ceremonial activities sponsored by the Commission; and

(iv) Upon the prior or subsequent approval of the Commission, preparation for and attendance at other meetings, or the performance of any activities assigned by the Commission.

(g) All members of the Commission, as special or intermittent Federal employees, shall be entitled to advances or reimbursement of expenses incurred in the performance of the activities described in paragraph (f) of this section in accordance with the applicable Federal regulations.

**§ 10001.2 Meetings.**

(a) The Commission shall meet at least quarterly each year and may meet at the call of the Chairman or upon the request of a majority of its members.

(1) Commission members may participate in a Commission meeting through the use of conference telephone or similar communications equipment with the consent of the Chairman, provided that all members so participating, members at the meeting, and attending members of the public, can hear each other clearly at all times.

(2) All meetings of the Commission shall be open and public, and all persons are permitted to attend except when the Commission meets in executive or work session.

(i) Site visits by a quorum of the Commission are not considered to be meetings of the Commission; however, whenever feasible, interested members of the press will be invited to accompany the Commission on site visits.

(ii) Paragraph (a)(2) of this section shall not be interpreted so as to prohibit the removal of any person who willfully disrupts a meeting.

(3) The Commission may meet in executive session at any time and for any purpose authorized by law.

(i) It is the intention of the Commission that its meetings should generally be open and public, and that executive sessions should be held only when permitted by law or when the reasons for the executive session clearly exceed the merits of public disclosure.

(ii) A unanimous vote of the members present is required to move into executive session.

(iii) The Commission shall not authorize or approve any mitigation or conservation plan, amendment, or project while in executive session, and shall report a summary of all non-exempt information from such sessions at the next open meeting.

(iv) In the course of an executive session, any member may request that the matter under discussion be moved into an open meeting. Upon receiving such a request, the Chairman shall poll the members present in the executive session. If a majority agree to move the matter into an open meeting, the Chairman will close the discussion of the matter and schedule it for consideration at the next open meeting of the Commission.

(b) The agenda for each Commission meeting shall be established by the Chairman upon recommendation from any member of the Commission or the Executive Director and shall briefly set out all items of business expected to come before the Commission at the meeting for action, consideration, or information, and identify items upon which the Commission will accept public comment.

(1) The agenda shall specify the time and location of the meeting.

(2) At least seven calendar days prior to a Commission meeting, the Executive Director shall publish the agenda for the upcoming meeting by providing copies to all members of the Commission, to major news media, and to all individuals, agencies, and organizations who have requested in writing to be given notice of Commission meetings.

(3) The deadline for submission to the Executive Director of items for Commission meetings shall be ten business days prior to the date of the meeting as previously set by the Commission.

(4) Any person appearing before the Commission to comment on an agenda item shall do so only when called by the Chairman. They shall state their name clearly for the record and may then address the Commission on the issue then under consideration, subject to reasonable time limits on the issue and individual speakers as established by the Chairman.

(5) The Executive Director shall make available for inspection by the public, at the commencement of and during a Commission meeting, copies of the meeting agenda and of any written material that is not exempt from public disclosure and that has been distributed in advance of the meeting to the Commission members for action, consideration, or information at the meeting. If non-exempt written material is distributed to the members during the meeting, copies thereof shall be made available for public inspection at the same time or as soon thereafter as practicable.

(6) Any person desiring to appear and present an item for Commission consideration shall file a written request to do so with the Executive Director. The request shall state the nature of the matter to be considered by the Commission. The Chairman shall then determine whether the matter should be placed on the agenda for a Commission meeting or should be referred to the Executive Director.

(c) The Executive Director shall record, or have recorded, by tape recording and stenographic notes, official minutes of all open portions of Commission meetings.

(1) The written minutes shall contain the following information:

(i) the date, time, and location of the meeting, together with the names of all members present and absent, the names of all staff present, and a copy of the registration list of others attending the meeting;

(ii) the substance of all matters proposed, considered, or decided, including actions to go into executive session and summaries of non-exempt information from executive sessions;

(iii) the names of all individuals who appeared before the Commission and the substance in brief of their comments;

(iv) all motions (including the identity of the moving and seconding members),

votes, and major decisions of the Commission; and

(v) any other information a member requests be entered in the minutes.

(2) The draft of the written minutes shall be prepared and forwarded to the members by the Executive Director in a reasonable time after the meeting. The members shall inform the Executive Director or his or her designee of any proposed additions or corrections prior to the final draft being sent to the members with the packet of materials for the next Commission meeting.

(3) The Commission shall approve the written minutes at its next regularly scheduled meeting. Upon such approval, the Chairman shall certify the approval of the minutes by signing the original document. One year after adoption of the minutes, the Executive Director shall cause the tape recording of the meeting to be erased and all stenographic notes to be destroyed, unless otherwise directed by the Commission.

(4) Within a reasonable time after approval of the minutes by the Commission, the Executive Director shall make the approved minutes available for public inspection.

(5) The Executive Director shall provide copies of the certified minutes to each member and maintain the original of the certified minutes in the agency files and archives.

Joan Degiorgio,

*Acting Executive Director.*

[FR Doc. 96–6755 Filed 3–26–96; 8:45 am]

BILLING CODE 4310–05–M

## DEPARTMENT OF COMMERCE

## National Oceanic and Atmospheric Administration

## 50 CFR Part 625

**[Docket No. 960314074–6074–01; I.D. 030696C]**

**RIN: 0648–XX52**

## Summer Flounder Fishery; Emergency for the Scup Fishery

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

**ACTION:** Emergency interim rule.

**SUMMARY:** NMFS amends the regulations implementing the Summer Flounder Fishery Management Plan (Summer Flounder FMP) to establish management measures for the scup fishery. These measures are contained in an amendment to the Summer Flounder FMP that will be submitted for NMFS review shortly. Emergency implementation of these measures is necessary because of the overexploited status of the stock. This action establishes a minimum fish size for both the recreational and commercial fisheries, and implements a minimum codend mesh requirement for otter trawl vessels that possess 4,000 lb or more (1,814 kg or more) of scup harvested in or from the exclusive economic zone (EEZ).

**EFFECTIVE DATE:** This emergency interim rule is effective from March 22, 1996, through June 25, 1996.

**ADDRESSES:** Copies of documents supporting this action, including the environmental assessment, are available from David R. Keifer, Executive Director, Mid-Atlantic Fishery Management Council, Room 2115 Federal Building, 300 S. New Street, Dover, DE 19901-6790.

**FOR FURTHER INFORMATION CONTACT:** Regina L. Spallone, Fishery Policy Analyst, (508)281–9221.

**SUPPLEMENTARY INFORMATION:** The Mid-Atlantic Fishery Management Council (Council) began the development of a scup fishery management plan (scup FMP) in 1978. Although preliminary development work was done, a scup FMP was not completed.

In January 1990, the Council and the Atlantic States Marine Fisheries Commission (ASMFC) began the development of an amendment to the Summer Flounder FMP to manage scup. However, the development of an amendment to manage scup was delayed because of a series of other amendments to the Summer Flounder FMP. Work on a separate scup FMP was not resumed until 1993.

The Council and the ASMFC adopted a scup FMP for NMFS review in November 1995. The Council had accelerated its work on the scup FMP after the release in March 1995 of the Plenary Report of the 19th Stock Assessment Workshop (19th SAW). The 19th SAW report established that the scup spawning stock biomass was at a record low level, and warned that recruitment failure in a single year could collapse the fishery. The report urged immediate action to substantially reduce fishing mortality. To provide some protection to the stock immediately, the Council also voted in November 1995 to request emergency implementation on January 1, 1996, of some of the management measures contained in the proposed scup FMP. The efforts of the Council and NMFS to prepare and review the required documents associated with emergency action were delayed by the government shutdown from December 21, 1995, through January 7, 1996, and by additional shutdowns due to severe winter weather.

These delays have also affected the submission of the proposed scup FMP. In addition, subsequent to the adoption of the scup FMP by the Council, NMFS requested that the proposed scup FMP be incorporated into the Summer Flounder FMP, as an amendment, to reduce the number of separate FMPs and regulations. As a result, the Council shortly will submit the scup FMP for NMFS review as Amendment 8 to the Summer Flounder FMP.

The management unit for the fishery is scup (*Stenotomus chrysops*) in U.S. waters of the Atlantic Ocean from 35°15.3′ N. lat., the latitude of Cape Hatteras Light, N.C., northward to the U.S.-Canadian border.

Implementing regulations are authorized by the Magnuson Fishery Conservation and Management Act (Magnuson Act), and are found at 50 CFR part 625, subparts C and D. This action is consistent with the criteria contained in a ''Notice of policy guidelines for the use of emergency rules'' published at 50 CFR chapter VI (57 FR 375, January 6, 1992). The Council and NMFS agree that the biological status of the scup stock requires immediate action through this emergency interim rule for conservation and management measures to protect the stock while Amendment 8 undergoes Secretarial review. The measures contained in this action for minimum fish sizes and minimum mesh size are the same as those adopted by the Council for Amendment 8. However, issuance of this emergency rule in no way prejudges approval or disapproval of Amendment 8. Further, this emergency rule contains a gear restriction, the effective date of which will be delayed 15 days to provide adequate time for affected industry members to adjust.

### Background

Abundance indices derived from NMFS trawl surveys and surveys conducted by the States of Rhode Island and Connecticut, and the Commonwealth of Massachusetts, indicate that the biomass of adult scup is at low levels. For example, the Northeast Fisheries Science Center's autumn offshore survey indices of scup (age 1+) abundance have declined dramatically in recent years. The 1993 index was the third lowest value observed in the time series and the 1994 index was the all-time lowest value since the survey began in 1967.