

over, after considering: current market conditions, the need to avoid discards in setting the gear when only small amounts of allocation remain, and the possibilities for transfers between vessels to consolidate residual allocations. While this approach has worked reasonably well in past years, anomalous fishery conditions since 2002 have resulted in the carryover of unprecedented amounts of unharvested Purse seine quota. Given this atypical situation, NMFS has reconsidered how the inseason transfer provisions should be applied to the Purse seine category in 2004.

The 2004 fishing year proposed initial BFT quota specifications were prepared in accordance with: the 2002 ICCAT quota recommendation, the ICCAT recommendation regarding the dead discard allowance, the HMS FMP percentage shares for each of the domestic categories including restrictions on landings of school BFT, and the addition or subtraction of any underharvest or overharvest from the previous fishing year (69 FR 71771, December 10, 2004). NMFS proposed initial quota specifications for the 2004 fishing year as follows: General category – 659.0 mt; Harpoon category – 81.4 mt; Purse Seine category – 389.4 mt; Angling category – 65.5 mt; Longline category – 171.2 mt; Trap category – 2.3 mt; and the Reserve category – 36.6 mt. Subsequently, NMFS transferred 300 mt from the General category, 45 mt from the Longline category, and 40 mt from the Harpoon category (69 FR 71732, December 10, 2004). These transfers resulted in additions of 223.1 mt to the Angling category and 161.9 mt to the Reserve.

NMFS has determined that a transfer of 100 mt from the Purse Seine category to the Reserve is warranted, based on the 2004 proposed BFT specifications, the subsequent transfers, an assessment of the commercial and recreational landings data to date, carryover of unharvested amounts from prior years, and considering the factors governing quota transfers between categories. The Reserve category was established, in part, for the purpose of compensating overharvest in any category and to ensure overall U.S. landings do not exceed ICCAT recommended quotas. Given the suspension of Purse seine fishing activity for the remainder of the 2004 fishing year and continued fishing activity in several other categories through May 31, 2005, it is likely that allowing for full utilization of the U.S. quota may require additional transfers from the Reserve.

The effects on rebuilding and overfishing as a result of this transfer are

predicted to be neutral. The prime effect is to transfer quota among categories and no additional harvest above the level authorized in the BFT rebuilding plan is anticipated. The transfer is consistent with the objectives of the HMS FMP as it would provide for fair and reasonable fishing opportunities and allow for maximum utilization of the 2004 U.S. BFT allocation while preventing an overharvest of that allocation.

#### *Monitoring and Reporting*

NMFS selected the duration of the reopening and the daily retention limit based on a review of available quota, dealer reports, daily landing trends, the availability of BFT on the fishing grounds, and previous fishing years effort and landings rates for the month of January. NMFS will continue to monitor the General category BFT fishery closely via the commercial BFT landing reports submitted by authorized BFT dealers. Once the General category BFT fishery has closed, NMFS will assess reported landings and available quota and determine if a subsequent reopening is warranted.

#### **Classification**

The Assistant Administrator for Fisheries, NOAA (AA), finds that it is impracticable and contrary to the public interest to provide prior notice of, and an opportunity for public comment on, this action. The General category BFT fishery closed on December 20, 2004, after a 13 day reopening. Catch rates were slower than anticipated, due primarily to inclement weather and the full 107 mt of quota that was available was not attained. Since the closure, NMFS has compiled all commercial BFT landing reports submitted by permitted dealers and determined that approximately 37 mt is still available for a limited General category BFT fishery in the month of January. Recent information shows BFT in the commercial size classes are now available off southern Atlantic states in nearshore areas and accessible to commercial anglers as well as Charter/Headboat operations. Under ATCA and the HMS FMP, NMFS is required to provide fishing opportunities to catch the available quota.

Delaying this action would be contrary to the public interest as BFT are now available in nearshore waters and will soon migrate out of range of the commercial and charter/headboat fleets. As the General category is currently closed, fishery participants are not currently able to access these BFT while they are available. It is in the public interest to act quickly to open the

fisheries while the BFT are accessible so that the short window of fishing opportunity is not lost. Therefore, the AA finds good cause under 5 U.S.C. 553(b)(B) to waive prior notice and the opportunity for public comment. For all of the above reasons and because this action relieves a restriction (e.g., reopens fisheries), there is good cause under 5 U.S.C. 553(d) to waive the delay in effectiveness of this action.

These actions are being taken under 50 CFR 635.23(a)(4) and 50 CFR 635.27(a)(8) and are exempt from review under Executive Order 12866.

**Authority:** 16 U.S.C. 971 *et seq.* and 1801 *et seq.*

Dated: December 28, 2004.

**Bruce C. Morehead**

*Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.*

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## **DEPARTMENT OF COMMERCE**

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

[Docket No. 041110317–4364–02; I.D. 110404B]

**RIN 0648–AR51**

### **50 CFR Part 648**

#### **Fisheries of the Northeastern United States; Summer Flounder, Scup, and Black Sea Bass Fisheries; 2005 and 2006 Summer Flounder Specifications; 2005 Scup and Black Sea Bass Specifications**

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

**ACTION:** Final rule; final specifications for the 2005 and 2006 summer flounder fisheries and for the 2005 scup and black sea bass fisheries, and preliminary 2005 quota adjustment; notification of 2005 commercial summer flounder quota harvest for Delaware.

**SUMMARY:** NMFS issues final specifications for the 2005 and 2006 summer flounder fisheries and for the 2005 scup and black sea bass fisheries, and makes preliminary adjustments to the 2005 commercial quotas for these fisheries. This final rule specifies allowed harvest limits for both commercial and recreational fisheries, including scup possession limits. This action prohibits federally permitted commercial vessels from landing summer flounder in Delaware in 2005. Regulations governing the summer

flounder fishery require publication of this notification to advise the State of Delaware, Federal vessel permit holders, and Federal dealer permit holders that no commercial quota is available for landing summer flounder in Delaware in 2005. This action also makes changes to the regulations regarding the commercial scup fishery. The intent of this action is to establish allowed 2005 harvest levels and other measures to attain the target fishing mortality (F) or exploitation rates, as specified for these species in the Summer Flounder, Scup, and Black Sea Bass Fishery Management Plan (FMP), and to reduce bycatch and improve the efficiency of the commercial scup fishery.

**DATES:** This rule is effective December 30, 2004.

**ADDRESSES:** Copies of the specifications document, including the Environmental Assessment (EA), Regulatory Impact Review (RIR), the Initial Regulatory Flexibility Analysis (IRFA), and other supporting documents for the specification are available from Daniel Furlong, Executive Director, Mid-Atlantic Fishery Management Council, Room 2115, Federal Building, 300 South Street, Dover, DE 19901-6790. The specifications document 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 are available from Patricia A. Kurkul, Regional Administrator, Northeast Region, National Marine Fisheries Service, One Blackburn Drive, Gloucester, MA 01930-2298.

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

**SUPPLEMENTARY INFORMATION:**

**Background**

The summer flounder, scup, and black sea bass 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 management units

specified in the FMP include summer flounder (*Paralichthys dentatus*) in U.S. waters of the Atlantic Ocean from the southern border of North Carolina (NC) northward to the U.S./Canada border, and scup (*Stenotomus chrysops*) and black sea bass (*Centropristis striata*) in U.S. waters of the Atlantic Ocean from 35°13.3' N. lat. (the latitude of Cape Hatteras Lighthouse, Buxton, NC) northward to the U.S./Canada border. Implementing regulations for these fisheries are found at 50 CFR part 648, subparts A, G (summer flounder), H (scup), and I (black sea bass).

The regulations outline the process for specifying annually the catch limits for the summer flounder, scup, and black sea bass commercial and recreational fisheries, as well as other management measures (e.g., mesh requirements, minimum fish sizes, gear restrictions, possession restrictions, and area restrictions) for these fisheries. The measures are intended to achieve the annual targets set forth for each species in the FMP, specified either as an F or an exploitation rate (the proportion of fish available at the beginning of the year that are removed by fishing during the year). Once the catch limits are established, they are divided into quotas based on formulas contained in the FMP. Detailed background information regarding the status of the summer flounder, scup, and black sea bass stocks and the development of the 2005 specifications for these fisheries (and 2006 summer flounder specifications) was provided in the proposed specifications (69 FR 70414, December 6, 2004). That information is not repeated here.

NMFS will establish the 2005 recreational management measures for summer flounder, scup, and black sea bass by publishing a proposed and final rule in the **Federal Register** at a later date, following receipt of the Council's recommendations as specified in the FMP.

**Summer Flounder**

The FMP specifies a target F of  $F_{max}$ , that is, the level of fishing that produces maximum yield per recruit. The best available scientific information indicates that, for 2005 and 2006,  $F_{max}$  for summer flounder is 0.26 (equal to an exploitation rate of about 22 percent from fishing). The Total Allowable

Landings (TAL) associated with the target F rate is allocated 60 percent to the commercial sector and 40 percent to the recreational sector. The commercial quota is allocated to the coastal states based upon percentage shares specified in the FMP. The recreational harvest limit is specified on a coastwide basis. Recreational measures will be the subject of a separate rulemaking early in 2005.

This final rule implements the specifications contained in the proposed rule, a summer flounder TAL of 30.3 million lb (13,744 mt) for 2005 and 33.0 million lb (14,969 mt) for 2006. The TAL for 2005 is allocated 18.18 million lb (8,246 mt) to the commercial sector and 12.12 million lb (5,498 mt) to the recreational sector, and the TAL for 2006 is allocated 19.8 million lb (8,981 mt) to the commercial sector and 13.2 million lb (5,987 mt) to the recreational sector. This TAL was determined by the Council's Summer Flounder Monitoring Committee to have at least a 75-percent probability of achieving the  $F_{max}$  (0.26) that is specified in the FMP, if the 2004 TAL and assumed discard levels are not exceeded. Two research projects that would utilize the full summer flounder research set-aside (RSA) of 353,917 lb (161 mt) have been conditionally approved by NMFS and are currently awaiting notice of award. After deducting this RSA, the TAL is divided into a commercial quota of 17.97 million lb (8,151 mt) and a recreational harvest limit of 11.98 million lb (5,434 mt). If either project is not approved by the NOAA Grants Office, the research quota associated with the disapproved proposal will be restored to the summer flounder TAL through publication of a notice in the **Federal Register** by NMFS.

Consistent with the revised quota setting procedures for the FMP (67 FR 6877, February 14, 2002), summer flounder overages are determined based upon landings for the period January–October 2004, plus any previously unaccounted for landings from January–December 2003. Table 1 summarizes, for each state, the commercial summer flounder percent share, the 2005 commercial quota (both initial and less the RSA), the 2004 quota overages as described above, and the resulting final adjusted 2005 commercial quota less the RSA.

TABLE 1.—FINAL STATE-BY-STATE COMMERCIAL SUMMER FLOUNDER ALLOCATIONS FOR 2005

State	Percent share	2005 initial quota		2005 initial quota less RSA		2004 quota overages (through 10/31/04) <sup>1</sup>		Adjusted 2005 quota, less RSA <sup>2</sup>	
		lb	kg	lb	kg	lb	kg	lb	kg
ME .....	0.04756	8,646	3,922	8,547	3,877	0	0	8,547	3,877
NH .....	0.00046	84	38	83	37	0	0	83	37
MA .....	6.82046	1,239,960	562,442	1,225,637	555,945	48,083	21,810	1,177,554	534,130
RI .....	15.68298	2,851,166	1,293,280	2,818,232	1,278,341	0	0	2,818,232	1,278,341
CT .....	2.25708	410,337	186,128	405,597	183,978	0	0	405,597	183,978
NY .....	7.64699	1,390,223	630,601	1,374,164	623,317	0	0	1,374,164	623,317
NJ .....	16.72499	3,040,603	1,379,209	3,005,481	1,363,277	0	0	3,005,481	1,363,277
DE .....	0.01779	3,234	1,467	3,197	1,450	54,536	24,737	(51,339)	(23,287)
MD .....	2.03910	370,708	168,152	366,426	166,210	19,028	8,631	347,398	157,577
VA .....	21.31676	3,875,387	1,757,864	3,830,622	1,737,559	0	0	3,830,622	1,737,559
NC .....	27.44584	4,989,654	2,263,292	4,932,017	2,237,148	0	0	4,932,017	2,237,148
Total <sup>3</sup> .....	100.00	18,180,002	8,246,395	17,970,002	8,151,139	121,647	55,178	17,899,695	8,119,165

<sup>1</sup> 2004 Quota overage is determined through comparison of landings for January through October 2004, plus any landings in 2003 in excess of the 2003 quota (that were not previously addressed in the 2004 specifications), with the final 2004 quota (as revised) for each state (69 FR 10937, March 9, 2004). For Delaware, includes continued repayment of overharvest from 2003.

<sup>2</sup> Parentheses indicate a negative number.

<sup>3</sup> Total quota is the sum of all states having allocation. A state with a negative number has an allocation of zero (0). Kilograms are as converted from pounds and may not necessarily add due to rounding.

The Commission has established a system whereby 15 percent of each state's quota may be voluntarily set aside each year to enable vessels to land an incidental catch allowance after the directed fishery in a state has been closed. The intent of the incidental catch set-aside is to reduce discards by allowing fishermen to land summer flounder caught incidentally in other fisheries during the year, while ensuring that the state's overall quota is not exceeded. These Commission set-asides are not included in these 2005 and 2006 final summer flounder specifications because NMFS does not have authority to establish such subcategories.

#### Delaware Summer Flounder Closure

Table 1 above indicates that for Delaware, the amount of the 2004 summer flounder quota overage (inclusive of overharvest from 2003) is greater than the amount of commercial quota allocated to Delaware for 2005. As

a result, there is no quota available for 2005 in Delaware. The regulations at § 648.4(b) provide that Federal permit holders, as a condition of their permit, must not land summer flounder in any state that the Regional Administrator has determined no longer has commercial quota available for harvest. Therefore, effective December 30, 2004, landings of summer flounder in Delaware by vessels holding commercial Federal fisheries permits are prohibited for the 2005 calendar year, unless additional quota becomes available through a quota transfer and is announced in the **Federal Register**. Federally permitted dealers are advised that they may not purchase summer flounder from federally permitted vessels that land in Delaware for the 2005 calendar year, unless additional quota becomes available through a transfer, as mentioned above.

For 2006, because information pertaining to the potential amount of

RSA is unknown, RSA is conservatively estimated as 3 percent of the TAL (the maximum allowed under the FMP), *i.e.*, 990,000 lb (449 mt). After deducting the RSA, the TAL for 2006 will be divided into a commercial quota of 19.21 million lb (8,714 mt) and a recreational harvest limit of 12.80 million lb (5,806 mt). Table 2 shows, for each state, the commercial summer flounder percent share, the 2006 commercial quota (both initial and less the RSA, which is estimated at this point and which will be revised in the proposed specifications for 2006). These state quota allocations are preliminary and are subject to a reduction if there are any overages of a state's quota for the previous fishing year (using the landings information and procedures described earlier). Any commercial quota adjustments to account for 2005 overages will be published in the **Federal Register** in the final rule implementing the 2006 specifications.

TABLE 2.—2006 PROPOSED INITIAL SUMMER FLOUNDER STATE COMMERCIAL QUOTAS

State	Percent share	Initial quota <sup>1</sup>		Initial quota less RSA <sup>1</sup>	
		lb	kg <sup>2</sup>	lb	kg <sup>2</sup>
ME .....	0.04756	9,417	4,271	9,136	4,144
NH .....	0.00046	91	41	88	40
MA .....	6.82046	1,350,451	612,561	1,310,210	594,308
RI .....	15.68298	3,105,230	1,408,523	3,012,700	1,366,552
CT .....	2.25708	446,902	202,713	433,585	196,673
NY .....	7.64699	1,514,104	686,793	1,468,987	666,328
NJ .....	16.72499	3,311,548	1,502,108	3,212,871	1,457,349
DE .....	0.01779	3,522	1,598	3,417	1,550
MD .....	2.03910	403,742	183,136	391,711	177,679
VA .....	21.31676	4,220,718	1,914,505	4,094,950	1,857,457
NC .....	27.44584	5,434,276	2,464,972	5,272,346	2,391,520

TABLE 2.—2006 PROPOSED INITIAL SUMMER FLOUNDER STATE COMMERCIAL QUOTAS—Continued

State	Percent share	Initial quota <sup>1</sup>		Initial quota less RSA <sup>1</sup>	
		lb	kg <sup>2</sup>	lb	kg <sup>2</sup>
Total .....	100.00	19,800,002	8,981,222	19,210,002	8,713,600

<sup>1</sup> State quotas are preliminary and will be adjusted as necessary in the 2006 final quota based on any overage of a state's quota for the previous fishing year.

<sup>2</sup> Kilograms are as converted from pounds and do not add to the converted total due to rounding.

**Scup**

The target exploitation rate for scup for 2005 is 21 percent. The FMP specifies that the Total Allowable Catch (TAC) associated with a given exploitation rate be allocated 78 percent to the commercial sector and 22 percent to the recreational sector. Scup discard estimates are deducted from both sectors' TACs to establish TALs for each sector (TAC less discards = TAL). The commercial TAL is then allocated on a percentage basis to three quota periods, as specified in the FMP: Winter I (January–April)—45.11 percent; Summer (May–October)—38.95 percent; and Winter II (November–December)—15.94 percent. The recreational harvest limit is allocated on a coastwide basis. Recreational measures will be the

subject of a separate rulemaking early in 2005.

This final rule implements the specifications contained in the proposed rule, *i.e.*, an 18.65-million lb (8,460-mt) scup TAC and a 16.5-million lb (7,484-mt) scup TAL. After deducting 303,675 lb (138 mt) of RSA for the three approved research projects, the TAL is divided into a commercial quota of 12.23 million lb (5,547 mt) and a recreational harvest limit of 3.96 million lb (1,796 mt). If any of these projects are not approved by the NOAA Grants Office, the research quota associated with the disapproved proposal(s) will be restored to the scup TAL through publication of a notice in the **Federal Register** by NMFS.

Consistent with the revised quota setting procedures established for the FMP (67 FR 6877, February 14, 2002),

scup overages are determined based upon landings for the Winter I and Summer 2004 periods, plus any previously unaccounted for landings from January–December 2003. Table 3 presents the final 2004 commercial scup quota for each period and the reported 2004 landings for the 2004 Winter I and Summer periods; there was no overage of the Winter I or Summer quota. On October 12, 2004 (69 FR 60565), NMFS announced a transfer of quota from Winter I to Winter II 2004. Per the quota counting procedures, after June 30, 2005, NMFS will compile all available landings data for Winter II 2004 and compare the landings to the Winter II 2004 allocation, as adjusted. Any overages will be determined and required deductions will be made to the Winter II 2005 allocation.

TABLE 3.—SCUP PRELIMINARY 2004 COMMERCIAL LANDINGS BY QUOTA PERIOD

Quota period	2004 Quota		Reported 2004 landings through 10/31/04		Preliminary overages as of 10/31/04	
	lb	kg	lb	kg	lb	kg
Winter I .....	5,568,920	2,526,020	3,592,469	1,629,517	0	0
Summer .....	4,808,455	2,181,078	3,845,362	1,744,227	0	0
Winter II .....	1,967,825	892,590	N/A	N/A	N/A	N/A
Total .....	12,345,200	5,599,689	7,437,831	3,373,744	.....	.....

N/A = Not applicable.

Table 4 presents the commercial scup percent share, 2005 TAC, projected discards, 2005 initial quota (with and without the RSA deduction), and initial possession limits, by quota period. To achieve the commercial quotas, this

final rule implements a Winter I period (January–April) per-trip possession limit of 30,000 lb (6.8 mt), and a Winter II period (November–December) initial per-trip possession limit of 1,500 lb (680 kg). The Winter I per-trip possession

limit will be reduced to 1,000 lb (454 kg) when 80 percent of the commercial quota allocated to that period is projected to be harvested.

TABLE 4.—INITIAL COMMERCIAL SCUP/QUOTA ALLOCATIONS FOR 2005 BY QUOTA PERIOD

Period	Percent share	Total allowable catch		Discards		2005 initial quota		2005 initial quota less RSA		Possession limits (per trip) <sup>2</sup>	
		lb	kg <sup>1</sup>	lb	kg	lb	kg	lb	kg	lb	kg
Winter I ...	45.11	6,563,505	2,977,186	938,288	425,605	5,625,217	2,551,582	5,518,367	2,503,089	15,000	6,804
Summer ..	38.95	5,667,225	2,570,636	810,160	367,486	4,857,065	2,203,150	4,764,806	2,161,280	<sup>3</sup> N/A	<sup>3</sup> N/A
Winter II ..	15.94	2,319,270	1,052,014	331,552	150,391	1,987,718	901,623	1,949,962	884,487	1,500	680
Total	100.00	14,550,000	6,599,837	2,080,000	943,482	12,470,000	5,656,355	12,233,135	5,548,856	.....	.....

<sup>1</sup> Kilograms are as converted from pounds and may not necessarily add due to rounding.

<sup>2</sup>The Winter I possession limit will drop to 1,000 lb (454 kg) upon attainment of 80 percent of that period's allocation. The Winter II possession limit may be adjusted (in association with a transfer of unused Winter I quota to the Winter II period) via notification in the **Federal Register**.

<sup>3</sup>Not applicable.

As described in the proposed rule, the Council recommended no change in the Winter II possession limits that result from potential rollover of quota from the Winter I period for the 2005 fishing year. Therefore, NMFS maintains the Winter II possession limit-to-rollover amount ratios specified for 2004, as presented in Table 5.

TABLE 5.—POTENTIAL INCREASE IN WINTER II POSSESSION LIMITS BASED ON THE AMOUNT OF SCUP ROLLED OVER FROM WINTER I TO WINTER II PERIOD

Initial winter II possession limit		Rollover from winter I to winter II		Increase in initial winter II possession limit		Final winter II possession limit after rollover from winter I to winter II	
lb	kg	lb	mt	lb	kg	lb	kg
1,500	680	0–499,999	0–227	0	0	1,500	680
1,500	680	500,000–999,999	227–454	500	227	2,000	907
1,500	680	1,000,000–1,499,999	454–680	1,000	454	2,500	1,134
1,500	680	1,500,000–1,999,999	680–907	1,500	680	3,000	1,361
1,500	680	2,000,000–2,500,000	907–1,134	2,000	907	3,500	1,587

**Other Scup Management Measures**

This final rule makes two changes to the regulations regarding the directed otter trawl fishery for scup. The purpose of these modifications is to reduce potential scup discards. First, NMFS increases the minimum mesh size to 5 inches (12.7 cm) for the first 75 meshes from the terminus of the net; and for codends constructed with fewer than 75 meshes, requires a minimum mesh size of 5 inches (12.7 cm) throughout the net. Second, this final rule increases the threshold level to trigger the minimum mesh size requirement from 100 lb (45 kg) to 200 lb (90 kg) for the Scup Summer period (May 1 through October 31). The change to the minimum mesh size regulations also apply in the Scup Gear Restricted Areas (GRA's).

**Scup GRA's**

This final rule shifts the entire Southern GRA by 3 longitudinal minutes to the west. The recommendation to move the Southern GRA follows an industry request and

subsequent analysis by the Northeast Fisheries Science Center (NEFSC), which indicates that the shift would expose an additional 3 percent of the scup stock to small-mesh gear during the effective period, while allowing access to an additional 8 percent of the *Loligo* squid stock. NMFS also terminates the existing GRA Exemption Program, in which no vessels have participated to date. The intent of these actions is to allow greater opportunity for trawl vessels to harvest *Loligo* squid while maintaining the protective aspects of the Southern GRA for scup.

**Black Sea Bass**

For 2005, the target exploitation rate for black sea bass is 25 percent. The FMP specifies that the TAL associated with a given exploitation rate be allocated 49 percent to the commercial sector and 51 percent to the recreational sector. The recreational harvest limit is allocated on a coastwide basis. Recreational measures will be the subject of a separate rulemaking early in 2005.

This final rule implements the specifications contained in the proposed rule, *i.e.*, an 8.2-million lb (3,719-mt) black sea bass TAL. After deducting 109,500 lb (50 mt) of RSA for the three approved research projects, the TAL is divided into a commercial quota of 3.97 million lb (1,796 mt) and a recreational harvest limit of 4.13 million lb (1,873 mt). If any of these projects are not approved by the NOAA Grants Office, the research quota associated with the disapproved proposal(s) will be restored to the black sea bass TAL through publication of a notice in the **Federal Register** by NMFS.

Consistent with the revised quota setting procedures for the FMP, black sea bass overages are determined based upon landings for the period January–September 2004, plus any previously unaccounted for landings from January–December 2003. No adjustment to the 2005 commercial quota is necessary. Table 6 presents the initial 2005 commercial quota and the final 2005 commercial quota (less the RSA).

TABLE 6.—FINAL BLACK SEA BASS COMMERCIAL QUOTA ALLOCATIONS FOR 2005

2005 initial quota (lb)	2005 quota less research Set-aside (lb)	Quota overages (through 09/30/04) (lb)	Final (adjusted) 2005 quota (lb)
4,020,000	3,966,345	0	3,966,345

**Other Changes to the Regulations**

In addition to the changes recommended by the Council and the Commission's Summer Flounder, Scup, and Black Sea Bass Management Board (Board), this final rule removes references to a specific date by which the Summer Flounder, Scup, and Black

Sea Bass Monitoring Committees shall meet for the purposes of recommending annual or multi-year TALs. This action is intended to provide flexibility for the Council in scheduling Monitoring Committee meetings and to remove an unnecessary restriction. NMFS previously modified the text regarding

Monitoring Committee meetings in §§ 648.100, 648.120, and 648.140 to reflect that annual review of updated information on the fisheries by the Monitoring Committees would not be required during the period of multi-year specifications. These regulatory changes

were effective November 29, 2004 (69 FR 62818, October 28, 2004).

### Changes From the Proposed Rule

In the proposed rule, the longitude coordinate for the Southern GRA point SGA1 was inadvertently listed as 72°50' W. long. In the second mention of SGA1, NMFS corrects the longitude coordinate of point SGA1 to 72°53' W. long to reflect the shift of the entire Southern GRA by 3 longitudinal minutes to the west.

### Comments and Responses

One comment letter was received regarding the proposed measures.

*Comment 1:* The commenter, representing a commercial seafood association, wrote in support of the proposed TALs, RSA amounts, commercial scup possession limits, scup minimum mesh size, and westward shift of the Southern GRA.

*Response:* NMFS agrees and this final rule implements these proposed measures.

*Comment 2:* The same commenter noted the error in the Southern GRA point 1 as described in Changes from the Proposed Rule in this preamble.

*Response:* NMFS has corrected the Southern GRA point 1 coordinate in this final rule.

### Classification

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

The Assistant Administrator for Fisheries, NOAA, finds good cause under 5 U.S.C. 553(d)(3) to waive the 30-day delayed effectiveness period for this rule. This action establishes annual quotas for the summer flounder, scup, and black sea bass fisheries and possession limits for the commercial scup fishery. Preparation of the proposed rule was dependent on the submission by the Council of the final EA/RIR/IRFA, which occurred in early November 2004, and appended in early December 2004. NMFS published the proposed rule on December 6, 2004, with an abbreviated, 15-day comment period, in order to allow for finalization of the proposed regulatory changes by January 1, 2005. NMFS was unable to obtain the necessary data from the Council before November 2004 to finalize the specifications. Therefore, in order to implement the 2005 specifications before the beginning of the finishing season beginning January 1, 2005, NMFS waives the 30-day delay in effectiveness.

If implementation of the specifications is delayed, NMFS will be prevented from carrying out its legal

obligation to prevent overfishing of these three species. The fisheries covered by this action will begin making landings on January 1, 2005. If a delay in effectiveness were to be required, and a quota were to be harvested during a delayed effectiveness period, the lack of effective quota specifications would prevent NMFS from closing the fishery. The scup and black sea bass fisheries are expected to be active at the start of the fishing season in 2005. In addition, the Delaware summer flounder fishery would be open for fishing but in a negative quota situation. This likely would result in overages that may require deduction from the associated state quota or coastwide quota period in the future, and might have a negative economic impact for some gear sectors.

Additionally, pursuant to 5 U.S.C. 553(d)(1), the measure regarding the commercial scup possession limit relieves a restriction and is therefore not subject to a delay in effective date. The current commercial scup possession limit (15,000 lb (6.8 mt) per trip) is more restrictive than the measure recommended by the Council and implemented by NMFS in this rule (30,000 lb (13.6 mt) per trip).

Under the current GRA Exemption Program requirements, vessels that are subject to the provisions of the GRA's must carry on board a Scup GRA Exemption Program Authorization (which requires application to the Regional Administrator) and a NMFS-certified observer in order to fish for, or possess, non-exempt species (black sea bass, *Loligo* squid, or silver hake (whiting)) using trawl nets having a minimum mesh size less than that required at § 648.123. A minimum of 5 business days in advance of a trip is required to obtain an observer. NMFS terminates the GRA Exemption Program in this rule at the recommendation of the Council and because no vessels have participated in the program to date. Further, NMFS shifts the entire Southern GRA by 3 longitudinal minutes to the west in response to an industry request and subsequent analysis by the NEFSC, which indicates that the shift would expose an additional 3 percent of the scup stock to small-mesh gear during the effective period, while allowing access to an additional 8 percent of the *Loligo* squid stock. NMFS implements this measure in order to allow greater opportunity for trawl vessels to harvest *Loligo* squid while maintaining the protective aspects of the Southern GRA for scup. The commercial scup fishery is active at the beginning of January. If a delay in effectiveness were to be required, it would affect trawl vessel owners' ability

to plan fishing trips until the rule is in effect, specifically due to the current Scup GRA Exemption Program requirements.

Included in this final rule is the Final Regulatory Flexibility Analysis (FRFA) prepared pursuant to 5 U.S.C. 604(a). The FRFA incorporates the IRFA, the comments and responses to the proposed rule (69 FR 70414, December 6, 2004), and the analyses completed in support of this action. A copy of the EA/RIR/IRFA is available from the Council (see ADDRESSES).

The preamble to the proposed rule included a detailed summary of the analyses contained in the IRFA, and that discussion is not repeated here.

### 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.

#### *Summary of Significant Issues Raised in Public Comments*

The one comment letter received on the proposed rule did not specifically address the potential economic impact of the rule. Other than the correction described in Changes to the Proposed Rule, no changes to the proposed rule were required to be made as a result of public comments. For a summary of the comments received, and the responses thereto refer to the "Comments and Responses" section of this preamble.

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

The categories of small entities likely to be affected by this action include commercial and charter/party vessel owners holding an active Federal permit for summer flounder, scup, or black sea bass, as well as owners of vessels that fish for any of these species in state waters. The Council estimates that the 2005 quotas (and 2006 summer flounder quota) could affect 2,114 vessels that held a Federal summer flounder, scup, and/or black sea bass permit in 2003. However, the more immediate impact of this final rule will likely be felt by the 1,040 vessels that actively participated (*i.e.*, landed these species) in these fisheries in 2003.

#### *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*

Economic impacts are being minimized to the extent practicable with the quota specifications being implemented in this final rule, while being consistent with the target fishing mortality rates or target exploitation rates specified in the FMP. Specification of commercial quotas and possession limits is constrained by the conservation objectives of the FMP, and implemented at 50 CFR part 648 under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act).

The economic analysis assessed the impacts of the various management alternatives. In the EA, the no action alternative is defined as follows: (1) No proposed specifications for the 2005 and 2006 summer flounder fishery and for

the 2005 scup and black sea bass fisheries would be published; (2) the indefinite management measures (minimum sizes, possession limits, minimum mesh size, threshold limits to trigger mesh requirements, permit and reporting requirements, etc.) would remain unchanged; (3) there would be no quota set-aside allocated to research in 2005 and 2006; (4) the existing GRA's and GRA regulations would remain in place for 2005; and (5) there would be no specific cap on the allowable annual landings in these fisheries (*i.e.*, there would be no quota). Implementation of the no action alternative would be inconsistent with the goals and objectives of the FMP, its implementing regulations, and the Magnuson-Stevens Act. In addition, the no action alternative would substantially complicate the approved management program for these fisheries, and would very likely result in overfishing of the resources. Therefore, the no action alternative is not considered to be a

reasonable alternative to the preferred action and is not analyzed in the EA/ RIR/IRFA/FRFA.

Alternative 1 (preferred) consists of the harvest limits proposed by the Council and the Board for summer flounder, scup, and black sea bass. Alternative 2 consists of the most restrictive quotas (*i.e.*, lowest landings) considered by the Council and the Board for all of the species. Alternative 3 consists of the least restrictive quotas (*i.e.*, highest landings) considered by the Council and Board for all three species. Although Alternative 3 would result in higher landings for 2005 (and for the summer flounder fishery in 2006), it would also likely exceed the biological targets specified in the FMP and could, therefore, not be implemented without violating the requirements of the Magnuson-Stevens Act.

Table 7 evaluates three alternative combinations of summer flounder, scup, and black sea bass landings (commercial and recreational).

TABLE 7.—COMPARISON IN LB (MT) OF THE ALTERNATIVES OF QUOTA COMBINATIONS REVIEWED

	Initial TAL	RSA	2004 commercial quota overage	Preliminary adjusted commercial quota	Preliminary recreational harvest limit
<b>Quota Alternative 1 (Preferred)</b>					
Summer Flounder Preferred Alternative—2005.	30.3 million (13,744) ...	353,917 (161) .....	121,647 (55) .....	17.87 million (8,108) ...	11.98 million (5,434)
Summer Flounder Preferred Alternative—2006.	33.0 million (14,969) ...	990,000 (449) .....	N/A .....	19.21 million (8,714) ...	12.80 million (5,806)
Scup Preferred Alternative (Status quo).	16.5 million (7,484) .....	303,675 (138) .....	0.00 .....	12.23 million (5,547) ...	3.96 million (1,796)
Black Sea Bass Preferred Alternative.	8.2 million (3,719) .....	109,500 (50) .....	0.00 .....	3.97 million (1,796) .....	4.13 million (1,873)
<b>Quota Alternative 2 (Most Restrictive)</b>					
Summer Flounder Alternative 2 (Status Quo)—2005.	28.2 million (12,791) ...	353,917 (161) .....	121,647 (55) .....	16.59 million (7,523) ...	11.14 million (5,053)
Summer Flounder Alternative 2 (Status Quo)—2006.	28.2 million (12,791) ...	846,000 (384) .....	N/A .....	16.41 million (7,443) ...	10.94 million (4,962)
Scup Alternative 2.	11.0 million (4,990) .....	303,675 (138) .....	0.00 .....	7.95 million (3,606) .....	2.74 million (1,242)
Black Sea Bass Alternative 2 (Status Quo).	8.0 million (3,629) .....	109,500 (50) .....	0.00 .....	3.87 million (1,755) .....	4.02 million (1,823)
<b>Quota Alternative 3 (Least Restrictive)</b>					
Summer Flounder Alternative 3—2005.	32.6 million (14,787) ...	353,917 (161) .....	121,647 (55) .....	19.23 million (8,721) ...	12.90 million (5,851)

TABLE 7.—COMPARISON IN LB (MT) OF THE ALTERNATIVES OF QUOTA COMBINATIONS REVIEWED—Continued

	Initial TAL	RSA	2004 commercial quota overage	Preliminary adjusted commercial quota	Preliminary recreational harvest limit
Summer Flounder Alternative 3—2006.	35.5 million (16,103) ...	1.07 (485) .....	N/A .....	20.66 million (9,371) ...	13.77 million (6,246)
Scup Alternative 3.	22.0 million (9,979) .....	303,675 (138) .....	0.00 .....	16.53 million (7,498) ...	5.17 million (2,345)
Black Sea Bass Alternative 3.	8.7 million (3,946) .....	109,500 (50) .....	0.00 .....	4.21 million (1,910) .....	4.38 million (1,987)

N/A=Not applicable. Any commercial quota adjustments to account for 2005 overages will be published in the **Federal Register** in the final rule implementing the 2006 specifications.

In summary, relative to 2004, the 2005 commercial quotas and recreational harvest limits contained in the Preferred Alternative would result in an 11-percent and a 7-percent increase in summer flounder landings for the commercial and recreational sectors, respectively, a less than 1-percent decrease in scup landings for both sectors, and a 5-percent and 3-percent increase in black sea bass landings for the commercial and recreational sectors, respectively; percentage changes associated with each alternative are discussed in the proposed rule. The measures contained in the Preferred Alternative were chosen because they provide for the maximum level of landings that still achieve the fishing mortality and exploitation targets specified in the FMP. While the commercial quotas and recreational harvest limits specified in Alternative 3 would provide for even larger increases in landings and revenues, they would not achieve the fishing mortality and exploitation targets specified in the FMP.

The commercial possession limits for scup were chosen in part because they are intended to provide for economically viable fishing trips that will be equitably distributed over the entire quota period. The minimum mesh size and threshold increases were chosen in part because they would effect reduction in the discard of undersized fish, thus increasing the efficiency of the commercial scup fishery. Through the proposed rule, NMFS specifically sought comment on the likely effectiveness of and/or costs associated with the proposed change in minimum mesh size for scup. The change to the minimum mesh size regulations also would apply in the Scup GRA's.

The decision to eliminate the GRA Exemption Program was made because no vessels have participated in the program since its implementation in 2003, and because there would be no

change to the economic aspects of the fishery. Revised Southern GRA coordinates were selected in order to allow greater opportunity for trawl vessels to harvest *Loligo* squid while maintaining the protective aspects of the Southern GRA for scup.

Finally, the revenue decreases associated with the RSA program are expected to be minimal, and are expected to yield important long-term benefits associated with improved fisheries data. It should also be noted that fish harvested under the RSAs would be sold, and the profits would be used to offset the costs of research. As such, total gross revenue to the industry would not decrease substantially if the RSAs are utilized.

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

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: December 28, 2004.

**John Oliver,**  
Deputy Assistant Administrator for Operations, National Marine Fisheries Service.

■ For the reasons stated 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 § 648.14, paragraph (a)(127) is removed and reserved, and paragraph(a)(122) is revised to read as follows:

**§ 648.14 Prohibitions.**

(a) \* \* \*

(122) Fish for, catch, possess, retain or land *Loligo* squid, silver hake, or black sea bass in or from the areas and during the time periods described in § 648.122(a) or (b) while in possession of any trawl nets or netting that do not meet the minimum mesh restrictions or that are obstructed or constricted as

specified in §§ 648.122 and 648.123(a), unless the nets or netting are stowed in accordance with § 648.123(b).

\* \* \* \* \*  
(127) [Reserved]  
\* \* \* \* \*

■ 3. In § 648.100, paragraph (a) is revised to read as follows:

**§ 648.100 Catch quotas and other restrictions.**

(a) *Review.* The Summer Flounder Monitoring Committee shall review each year the following data, subject to availability, unless a TAL has already been established for the upcoming calendar year as part of a multiple-year specification process, provided that new information does not require a modification to the multiple-year quotas, to determine the annual allowable levels of fishing and other restrictions necessary to achieve, with at least a 50-percent probability of success, a fishing mortality rate (F) that produces the maximum yield per recruit (F<sub>max</sub>): Commercial, recreational, and research catch data; current estimates of fishing mortality; stock status; recent estimates of recruitment; virtual population analysis results; levels of noncompliance by fishermen or individual states; impact of size/mesh regulations; sea sampling and winter trawl survey data or, if sea sampling data are unavailable, length frequency information from the winter trawl survey and mesh selectivity analyses; impact of gear other than otter trawls on the mortality of summer flounder; and any other relevant information.

\* \* \* \* \*

■ 4. In § 648.120, paragraph (a) is revised to read as follows:

**§ 648.120 Catch quotas and other restrictions.**

(a) *Review.* The Scup Monitoring Committee shall review each year the following data, subject to availability, unless a TAL already has been established for the upcoming calendar



year as part of a multiple-year specification process, provided that new information does not require a modification to the multiple-year quotas: Commercial, recreational, and research data; current estimates of fishing mortality; stock status; recent estimates of recruitment; virtual population analysis results; levels of noncompliance by fishermen or individual states; impact of size/mesh regulations; impact of gear on the mortality of scup; and any other relevant information. This review will be conducted to determine the allowable levels of fishing and other restrictions necessary to achieve the F that produces the maximum yield per recruit ( $F_{max}$ ).

\* \* \* \* \*

■ 5. In § 648.122, paragraph (d) is removed and reserved, and the section heading, paragraph (a)(1), and the first two sentences of paragraph (b)(1) are revised to read as follows:

**§ 648.122 Season and area restrictions.**

(a) \* \* \*

(1) *Restrictions.* From January 1 through March 15, all trawl vessels in the Southern Gear Restricted Area that fish for or possess non-exempt species as specified in paragraph (a)(2) of this section must fish with nets that have a minimum mesh size of 5.0-inch (12.7-cm) diamond mesh, applied throughout the codend for at least 75 continuous meshes forward of the terminus of the net. For trawl nets with codends (including an extension) of fewer than 75 meshes, the entire trawl net must have a minimum mesh size of 5.0 inches (12.7 cm) throughout the net. The Southern Gear Restricted Area is an area bounded by straight lines connecting the following points in the order stated (copies of a chart depicting the area are available from the Regional Administrator upon request):

**SOUTHERN GEAR RESTRICTED AREA**

Point	N. lat.	W. long.
SGA1 .....	39°20'	72°53'
SGA2 .....	39°20'	72°28'
SGA3 .....	38°00'	73°58'
SGA4 .....	37°00'	74°43'
SGA5 .....	36°30'	74°43'
SGA6 .....	36°30'	75°03'
SGA7 .....	37°00'	75°03'
SGA8 .....	38°00'	74°23'
SGA1 .....	39°20'	72°53'

\* \* \* \* \*

(b) \* \* \*

(1) \* \* \* From November 1 through December 31, all trawl vessels in the Northern Gear Restricted Area I that fish for or possess non-exempt species as specified in paragraph (b)(2) of this section, 5.0-inch (12.7 cm) diamond mesh, applied throughout the codend for at least 75 continuous meshes forward of the terminus of the net. For trawl nets with codends (including an extension) of fewer than 75 meshes, the entire trawl net must have a minimum mesh size of 5.0 inches (12.7 cm) throughout the net. \* \* \*

\* \* \* \* \*

(d) [Reserved]

\* \* \* \* \*

■ 6. In § 648.123, paragraph (a)(1) is revised to read as follows:

**§ 648.123 Gear restrictions.**

(a) \* \* \*

(1) *Minimum mesh size.* No owner or operator of an otter trawl vessel that is issued a scup moratorium permit may possess 500 lb (226.8 kg) or more of scup from November 1 through April 30, or 200 lb (90.7 kg) or more of scup from May 1 through October 31, unless fishing with nets that have a minimum mesh size of 5.0-inch (12.7-cm) diamond mesh, applied throughout the codend for at least 75 continuous meshes forward of the terminus of the net, and all other nets are stowed in

accordance with § 648.23(b)(1). For trawl nets with codends (including an extension) of fewer than 75 meshes, the entire trawl net must have a minimum mesh size of 5.0 inches (12.7 cm) throughout the net. Scup on board these vessels must be stowed separately and kept readily available for inspection. Measurement of nets will be in conformity with § 648.80(f)(2)(ii).

\* \* \* \* \*

■ 7. In § 648.140, paragraph (a) is revised to read as follows:

**§ 648.140 Catch quotas and other restrictions.**

(a) *Review.* The Black Sea Bass Monitoring Committee shall review each year the following data, subject to availability, unless a TAL already has been established for the upcoming calendar year as part of a multiple-year specification process, provided that new information does not require a modification to the multiple-year quotas, to determine the allowable levels of fishing and other restrictions necessary to result in a target exploitation rate of 23 percent (based on  $F_{max}$ ) in 2003 and subsequent years: Commercial, recreational, and research catch data; current estimates of fishing mortality; stock status; recent estimates of recruitment; virtual population analysis results; levels of noncompliance by fishermen or individual states; impact of size/mesh regulations; sea sampling and winter trawl survey data, or if sea sampling data are unavailable, length frequency information from the winter trawl survey and mesh selectivity analyses; impact of gear other than otter trawls, pots and traps on the mortality of black sea bass; and any other relevant information.

\* \* \* \* \*

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