

take reduction plan to protect North Atlantic right whales.

Environmental Assessments for the DAM program were prepared on December 28, 2001, and August 6, 2003. This action falls within the scope of the analyses of these EAs, which are available from the agency upon request.

NMFS provided prior notice and an opportunity for public comment on the regulations establishing the criteria and procedures for implementing a DAM zone. Providing prior notice and opportunity for comment on this action, pursuant to those regulations, would be impracticable because it would prevent NMFS from executing its functions to protect and reduce serious injury and mortality of endangered right whales. The regulations establishing the DAM program are designed to enable the agency to help protect unexpected concentrations of right whales. In order to meet the goals of the DAM program, the agency needs to be able to create a DAM zone and implement restrictions on fishing gear as soon as possible once the criteria are triggered and NMFS determines that a DAM restricted zone is appropriate. If NMFS were to provide prior notice and an opportunity for public comment upon the creation of a DAM restricted zone, the aggregated right whales would be vulnerable to entanglement which could result in serious injury and mortality. Additionally, the right whales would most likely move on to another location before NMFS could implement the restrictions designed to protect them, thereby rendering the action obsolete. Therefore, pursuant to 5 U.S.C. 553(b)(B), the AA finds that good cause exists to waive prior notice and an opportunity to comment on this action to implement a DAM restricted zone to reduce the risk of entanglement of endangered right whales in commercial lobster trap/pot and anchored gillnet gear as such procedures would be impracticable.

For the same reasons, the AA finds that, under 5 U.S.C. 553(d)(3), good cause exists to waive the 30-day delay in effective date. If NMFS were to delay for 30 days the effective date of this action, the aggregated right whales would be vulnerable to entanglement, which could cause serious injury and mortality. Additionally, right whales would likely move to another location between the time NMFS approved the action creating the DAM restricted zone and the time it went into effect, thereby rendering the action obsolete and ineffective. Nevertheless, NMFS recognizes the need for fishermen to have time to either modify or remove (if not in compliance with the required

restrictions) their gear from a DAM zone once one is approved. Thus, NMFS makes this action effective 2 days after the date of publication of this document in the **Federal Register**. NMFS will also endeavor to provide notice of this action to fishermen through other means as soon as the AA approves it, thereby providing approximately 3 additional days of notice while the Office of the **Federal Register** processes the document for publication.

NMFS determined that the regulations establishing the DAM program and actions such as this one taken pursuant to those regulations are consistent to the maximum extent practicable with the enforceable policies of the approved coastal management program of the U.S. Atlantic coastal states. This determination was submitted for review by the responsible state agencies under section 307 of the Coastal Zone Management Act. Following state review of the regulations creating the DAM program, no state disagreed with NMFS' conclusion that the DAM program is consistent to the maximum extent practicable with the enforceable policies of the approved coastal management program for that state.

The DAM program under which NMFS is taking this action contains policies with federalism implications warranting preparation of a federalism assessment under Executive Order 13132. Accordingly, in October 2001 and March 2003, the Assistant Secretary for Intergovernmental and Legislative Affairs, Department of Commerce, provided notice of the DAM program and its amendments to the appropriate elected officials in states to be affected by actions taken pursuant to the DAM program. Federalism issues raised by state officials were addressed in the final rules implementing the DAM program. A copy of the federalism Summary Impact Statement for the final rules is available upon request (**ADDRESSES**).

The rule implementing the DAM program has been determined to be not significant under Executive Order 12866.

**Authority:** 16 U.S.C. 1361 *et seq.* and 50 CFR 229.32(g)(3)

Dated: July 27, 2005.

**John Oliver,**

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

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 648

[Docket No. 030912231-3266-02; I.D. 071905B]

#### Fisheries of the Northeastern United States; Scup Fishery; Adjustment to the 2005 Winter II Quota

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

**ACTION:** Temporary rule; inseason adjustment.

**SUMMARY:** NMFS adjusts the 2005 Winter II commercial scup quota and possession limit. This action complies with Framework Adjustment 3 (Framework 3) to the Summer Flounder, Scup, and Black Sea Bass Fishery Management Plan, which established a process to allow the rollover of unused commercial scup quota from the Winter I period to the Winter II period.

**DATES:** This rule is effective November 1, 2005 through December 31, 2005.

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

**SUPPLEMENTARY INFORMATION:** NMFS published a final rule in the **Federal Register** on November 3, 2003 (68 FR 62250), implementing a process, for years in which the full Winter I commercial scup quota is not harvested, to allow unused quota from the Winter I period to be added to the quota for the Winter II period, and to allow adjustment of the commercial possession limits for the Winter II period commensurate with the amount of quota rolled over from the Winter I period. Table 5 of the final 2005 quota specifications for summer flounder, scup, and black sea bass (70 FR 303, January 4, 2005) presented detailed information regarding Winter II possession limits, based on the amount of scup to be rolled over from Winter I to Winter II.

For 2005, the Winter II quota is 1,949,962 lb (884,487 kg), and the best available landings information indicates that 2,223,502 lb (1,008,564 kg) remain of the Winter I quota of 5,518,367 lb (2,503,089 kg). Consistent with the intent of Framework 3, the full amount of unused 2005 Winter I quota is transferred to Winter II, resulting in a revised 2005 Winter II quota of 4,173,464 lb (1,893,051 kg). In addition to the quota transfer, the 2005 Winter II

possession limit is increased, consistent with the rollover specifications established in the 2005 final rule (70 FR 303), to 3,500 lb (1,588 kg) per trip to provide an appropriate opportunity for fishing vessels to obtain the increased Winter II quota.

**Classification**

This action is required by 50 CFR part 648 and is exempt from review under Executive Order 12866.

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

Dated: July 26, 2005.

**Alan D. Risenhoover,**

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

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