DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

RIN 0648–AT27

[Docket No. 051104293–5293–01; I.D. 102705B–X]

Fisheries of the Northeastern United States; Summer Flounder, Scup, and Black Sea Bass Fisheries; 2006 Summer Flounder, Scup, and Black Sea Bass Specifications; 2006 Research Set-Aside Projects

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

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS proposes specifications for the 2006 summer flounder, scup, and black sea bass fisheries. The implementing regulations for the Summer Flounder, Scup, and Black Sea Bass Fishery Management Plan (FMP) require NMFS to publish specifications for the upcoming fishing year for each of the species and to provide an opportunity for public comment. This proposed rule also would make changes to the regulations regarding the commercial black sea bass fishery. The intent of this action is to establish harvest levels and other measures to attain the target fishing mortality rates (F) or exploitation rates specified for these species in the FMP, to reduce bycatch, and to improve the efficiency of the commercial black sea bass fishery. NMFS has conditionally approved four research projects for the harvest of the portion of the quota that has been recommended by the Mid-Atlantic Fishery Management Council (Council) to be set aside for research purposes. In anticipation of receiving applications for Experimental Fishing Permits (EFPs) to conduct this research, the Assistant Regional Administrator for Sustainable Fisheries, Northeast Region, NMFS (Assistant Regional Administrator), has made a preliminary determination that the activities authorized under the EFPs issued in response to the approved Research Set-Aside (RSA) projects would be consistent with the goals and objectives of the FMP. However, further review and consultation may be necessary before a final determination is made to issue any EFP.

DATES: Comments must be received on or before December 2, 2005.

ADDRESSES: You may submit comments by any of the following methods:

- E-mail: *FSB2006@noaa.gov*. Include in the subject line the following identifier: ''Comments on 2006 Summer Flounder, Scup, and Black Sea Bass Specifications.''
- Federal e-Rulemaking portal: *http://www.regulations.gov*.
- Mail: Patricia A. Kurkul, Regional Administrator, NMFS, Northeast Regional Office, One Blackburn Drive, Gloucester, MA 01930. Mark the outside of the envelope: ''Comments on 2006 Summer Flounder, Scup, and Black Sea Bass Specifications.''
- Fax: (978) 281–9135.

Copies of the specifications document, including the Environmental Assessment, Regulatory Impact Review, and Initial Regulatory Flexibility Analysis (EA/RIR/IRFA) and other supporting documents for the specifications 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*.

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

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, subpart A (General Provisions), subpart G (summer flounder), subpart H (scup), and subpart I (black sea bass).

The regulations outline the process for specifying the annual 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.

As required by the FMP, a Monitoring Committee for each species, made up of members from NMFS, the Commission, and both the Mid-Atlantic and New England Fishery Management Councils, reviews the best available scientific information and recommends catch limits and other management measures that will achieve the target F or exploitation rate for each fishery. Consistent with the implementation of Framework Adjustment 5 to the FMP (69 FR 62818, October 28, 2004), each Monitoring Committee meets annually to recommend the Total Allowable Landings (TAL), unless the 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. Further, the TALs may be specified in any given year for the following 1, 2, or 3 years. NMFS is not obligated to specify multi-year TALs, but is able to do so, depending on the information available and the status of the fisheries.

The Council's Demersal Species Committee and the Commission's Summer Flounder, Scup, and Black Sea Bass Management Board (Board) consider the Monitoring Committees' recommendations and any public comment and make their own recommendations. While the Board action is final, the Council's recommendations must be reviewed by NMFS to assure that they comply with FMP objectives. The Council and Board made their recommendations, with the exception of Board recommendations for the summer flounder fishery, at a joint meeting held August 8–9, 2005. The Board delayed its action regarding a summer flounder TAL recommendation until its November 2, 2005 meeting. The Council and Board passed a recommendation to suspend the procedural rules regarding specifications setting so that the Council could communicate its recommendation to NMFS and submit the specifications document.

Explanation of RSA

In 2001, regulations were implemented under Framework Adjustment 1 to the FMP to allow up to 3 percent of the TAL for each species to be set aside each year for scientific research purposes. For the 2006 fishing year, a Request for Proposals was published to solicit research proposals based upon the research priorities that were identified by the Council (70 FR 20104, April 18, 2005). The deadline for submission of proposals was May 18, 2005. Four applicants were notified in August 2005 that their research proposals had received favorable preliminary review. For informational purposes, this proposed rule includes a statement indicating the amount of quota that has been preliminarily set aside for research purposes, as recommended by the Council and Board, and a brief description of the RSA projects. The RSA amounts may be adjusted in the final rule establishing the annual specifications for the summer flounder, scup, and black sea bass fisheries or, if the total amount of the quota set-aside is not awarded, NMFS will publish a document in the **Federal Register** to restore the unused RSA amount to the applicable TAL.

For 2006, four RSA projects have been conditionally approved by NMFS and are currently awaiting a notice of award. The total RSA quotas, approved by the Council and Board, allocated for all four projects are: 355,762 lb (161 mt) of summer flounder; 184,690 lb (84 mt) of scup; 178,956 lb (81 mt) of black sea bass; 281,089 lb (127 mt) of *Loligo* squid; and 363,677 lb (165 mt) of bluefish.

The University of Rhode Island submitted a proposal to conduct a third year of work in a fishery-independent scup survey that would utilize unvented fish traps fished on hard bottom areas in southern New England waters to characterize the size composition of the scup population. Survey activities would be conducted from May 1 through November 8, 2006, at 12 rocky bottom study sites located offshore, where there is a minimal scup pot fishery and no active trawl fishery. Up to two vessels would conduct the survey. Sampling would occur off the coasts of Rhode Island and southern Massachusetts. Up to three vessels would participate in harvesting the RSA during the period January 1 through December 31, 2006. The RSA allocated for this project is 2,000 lb (907 kg) of summer flounder; 40,940 lb (19 mt) of scup; and 29,000 lb (13 mt) of black sea bass.

The National Fisheries Institute (NFI) and Rutgers University submitted a proposal to conduct a fourth year of work on a commercial vessel-based trawl survey program in the Mid-Atlantic region that would track the migratory behavior of selected recreationally and commercially important species. Information gathered during this project would supplement the NMFS finfish survey databases and improve methods to evaluate how seasonal migration of fish in the Mid-Atlantic influences stock abundance estimates. Up to two vessels would conduct survey work in the Mid-Atlantic during January, March, May, and November 2006, along up to eight offshore transects. The transects would include six fixed offshore transects, one each near Alvin, Hudson, Baltimore, Poor Man's, Washington, and Norfolk Canyons, and two to three adaptive transects positioned within the Mid-Atlantic area selected during a pre-cruise meeting with NFI, Rutgers University, and the Northeast Fisheries Science Center (Center). Up to 15, 1-nautical mile tows would be conducted along each transect at depths from 40 to 250 fathoms (73 to 457 m). Up to 25 vessels would participate in harvesting the RSA during the period January 1 through December 31, 2006. The RSA allocated for the project is 223,140 lb (101 mt) of summer flounder; 123,750 lb (56 mt) of scup; 61,500 lb (28 mt) of black sea bass; 281,089 lb (127.5 mt) of *Loligo* squid; and 363,677 lb (165 mt) of bluefish.

The Fisheries Conservation Trust submitted a proposal to evaluate size and possession limits in the summer flounder recreational fishery. The project involves modeling summer flounder recreational fishery data and conducting studies on angler behavior under different summer flounder possession limit scenarios. Field work would be conducted by up to four recreational fishing party vessels providing summer flounder fishing trips off of New York (southern Long Island) and/or New Jersey (Monmouth, Ocean, Atlantic, and Cape May Counties). Four different size/possession limit scenarios would be tested using three replicate sampling days per boat, equaling up to 48 full-day vessel trips. At the end of each trip, each angler would fill out a questionnaire providing the number of flounder caught and discarded, and individual preferences on various size limits. Additionally, approximately 25 commercial vessels would harvest the RSA amounts allocated to the project. The RSA allocated for the project is 130,622 lb (59 mt) of summer flounder; 20,000 lb (9 mt) of scup; and 50,000 lb (23 mt) of black sea bass.

The Virginia Institute of Marine Science submitted a proposal for the evaluation of size selectivity and relative efficiency of black sea bass habitat pots equipped with large-mesh panels. The project would estimate the selectivity of an experimental design of a coated-wire black sea bass habitat pot to reduce the capture of sublegal black sea bass. The experimental pot would be composed of large-mesh panels on the top, bottom, and posterior end of the pot (opposite the bridle). Three different sizes of large-mesh panel would be tested: 2-inch (5.1-cm), 2.5-inch (6.4-cm), and 3-inch (7.6-cm). The project would utilize one licensed commercial black sea bass vessel to test the experimental trap design, and possibly a second vessel in the same size range to harvest some of the RSA. Approximately 12 experimental cruises would be conducted between May 1 and December 13, 2006. Sampling location would depend on black sea bass abundance between Ocean City, Maryland, and Currituck Light, NC. The specific location of trap sets would be at the captain's discretion. In general, sites would be approximately 20–50 miles (32–80 km) offshore in 90–130 ft (27–40 m) of water. Overall, the study would utilize 110 black sea bass habitat pots. The RSA allocated for the project is 38,456 lb (17 mt) of black sea bass.

Regulations under the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) require publication of this notification to provide interested parties the opportunity to comment on applications for proposed EFPs.

Explanation of Quota Adjustments Due to Quota Overages

This rule proposes commercial quotas based on the proposed TALs and Total Allowable Catches (TACs) and the formulas for allocation contained in the FMP. In 2002, NMFS published final regulations to implement a regulatory amendment (67 FR 6877, February 14, 2002) that revised the way in which the commercial quotas for summer flounder, scup, and black sea bass are adjusted if landings in any fishing year exceed the quota allocated (thus resulting in a quota overage). If NMFS approves a different TAL or TAC at the final rule stage, the commercial quotas will be recalculated based on the formulas in the FMP. Likewise, if new information indicates that overages have occurred and deductions are necessary, NMFS will publish notice of the adjusted quotas in the **Federal Register**. NMFS anticipates that the information

necessary to determine whether overage deductions are necessary will be available by the time the final rule to implement these specifications is published. The commercial quotas contained in this proposed rule for summer flounder, scup, and black sea bass do not reflect any deductions for overages. The final rule, however, will contain quotas that have been adjusted consistent with the procedures described above and contained in the regulatory amendment.

Summer Flounder

Summer flounder was assessed in June 2005 at the 41st Northeast Regional Stock Assessment Workshop. The Stock Assessment Review Committee (SARC) indicated that the summer flounder stock is not overfished, but that overfishing is occurring relative the biological reference points established in Amendment 12 to the FMP, *i.e.*, a maximum fishing mortality threshold of $F_{msy} = F_{max}$ (the level of fishing that produces maximum yield per recuit), and a minimum biomass threshold of ½ B_{msy} (one-half of the biomass necessary to produce the maximum sustainable yield), with MSY = 48.5 million lb (22,000 mt). When $F > F_{max}$, overfishing is considered to be occurring, and when $B < ½ B_{msy}$, the stock is considered overfished.

The SARC panelists also accepted the recommendations of the Center's Southern Demersal Species Working Group to update the biological reference points as follows: $F_{msy} = F_{max} = 0.276$; MSY = 42 million lb (19,051 mt); and B_{msy} = 204 million lb (92,532 mt). The total stock biomass estimate for January 2005 is 121 million lb (54,885 mt), about 19 percent above the new minimum biomass threshold (½ B_{msy}) of 102 million lb (46,266 mt). The F estimated for 2004 is 0.40, substantially above the new maximum fishing mortality threshold. It has been recognized since 1995 that the summer flounder stock assessment model tends to underestimate fishing mortality rates and overestimate stock biomass in the most recent years of the analysis (typically 5 years) until those estimates stabilize as new data are added to the analysis. Retrospective analysis conducted this year showed that the Fs for 2002 and 2003 are approximately 50 percent greater than previously estimated. This pattern is likely the result of an underestimation of the true catch, due to discards and/or unreported landings. This persistent retrospective pattern suggests that, although the summer flounder stock continues to increase, it is increasing at a lower rate and is currently at a smaller size than previously forecast. Additional rebuilding of the stock is necessary because the Magnuson-Stevens Act requires that stocks be rebuilt to the level that produces MSY on a continuing basis.

The information provided by the Summer Flounder Demersal Species Working Group and the SARC requires NMFS to reduce the 33 million lb (14,969 mt) TAL previously specified for 2006 to a level commensurate with the objectives of the FMP. In addition, a 2000 Federal Court Order requires that the TAL have at least a 50-percent probability of achieving the F target. Based on the latest stock assessment, a TAL of 23.59 million lb (10,700 mt) has a 50-percent probability of achieving an F of 0.276 in 2006, if the TAL and assumed discard level in 2005 are not exceeded.

The Council considered two very different TAL-setting strategies intended to continue to rebuild the summer flounder resource. Using the status quo constant-F strategy, the TALs associated with at least a 50-percent probability of meeting the target F would be 23.59 million lb (10,700 mt), 27.5 million lb (12,474 mt), and 30.9 million lb (14,016 mt) in 2006, 2007, and 2008, respectively. However, an assessment update in 2006 likely would provide new information that might necessitate modification to a multi-year quota, as it did in 2005, in order to meet the biomass target of 204 million lb (92,532 mt). The Council also considered a constant-harvest strategy, in which the same TAL would be maintained from 2006 through the end of the rebuilding period to achieve the target biomass. The Center's analysis determined this TAL to be 26 million lb (11,793 mt), but indicated that the TAL would result in only a 25-to 30-percent probability of meeting an F of 0.276 in 2006, increasing to a 60-percent probability in 2007, and a 90-percent probability in 2008. The Summer Flounder Monitoring Committee's recommendation was to set a summer flounder constant-harvest TAL of 26 million lb for 2006, 2007, and 2008.

At the August 2005 meeting, the Council and Board discussed the Monitoring Committee's recommendation at length, focusing on the likely explanations for the increased fishing mortality in recent years, the probability of achieving the F target over a 3-year time period (rather than annually) via a constant-harvest strategy, and the desire to mitigate a substantial reduction in TAL for 2006. In the end, the Council adopted a constant-harvest TAL of 26 million lb for 2006, 2007, and 2008. This TAL would represent a 14-percent decrease for 2006 from the 2005 TAL of 30.3 million lb (13,744 mt), and a 21-percent decrease from the previous specification of 33.0 million lb (14,969 mt) for 2006.

After careful review, NMFS has decided that the Council's summer flounder TAL recommendation (*i.e.*, the Council's Preferred Alternative 1) fails to meet the minimum standard necessary because the analysis indicates that, for 2006, the TAL would result in only a 25-to 30-percent probability of meeting the F target of 0.276. As indicated above, the setting of an annual TAL with less than a 50-percent probability of achieving the F target, *i.e.*, a 2006 TAL greater than 23.59 million lb (10,700 mt), would be contrary to the objectives of the FMP and a Federal Court Order. The Council submission also analyzed the following two TAL alternatives: A TAL of 23.59 million lb (10,700 mt) for 2006 (Alternative 2); and a status quo TAL of 30.3 million lb (13,744 mt) for 2006 (Alternative 3). Of these two alternatives, only Alternative 2 meets the objectives of the FMP and the legal constraints of the Federal Court Order. For these reasons, NMFS proposes to implement a TAL of 23.59 million lb (10,700 mt) for 2006. This TAL would represent a 22-percent decrease for 2006 from the 2005 TAL of 30.3 million lb (13,744 mt), and a 28.5-percent decrease from the previous specification of 33 million lb (14,969 mt) for 2006. The initial TAL would be allocated 60 percent (14,154,000 lb (6,420 mt)) to the commercial sector and 40 percent (9,436,000 lb (4,280 mt)) to the recreational sector, as specified in the FMP. For 2006, the Council and Board agreed to set aside 355,762 lb (161 mt) of the summer flounder TAL for research activities. After deducting the RSA from the TAL proportionally for the commercial and recreational sectors, *i.e.*, 60 percent and 40 percent, respectively, the commercial quota would be 13,940,543 lb (6,303 mt) and the recreational harvest limit would be 9,293,695 lb (4,216 mt). The commercial quota then would be allocated to the coastal states based upon percentage shares specified in the FMP.

In addition, the Commission is expected to maintain the voluntary measures currently in place to reduce regulatory discards that occur as a result of landing limits established by the states. The Commission established a system whereby 15 percent of each state's quota would be voluntarily set aside each year to enable vessels to land an incidental catch allowance after the directed fishery 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 also ensuring that the state's overall quota is not exceeded. These Commission set-asides are not included in any tables in this document because NMFS does not have authority to establish such subcategories.

Table 1 presents the proposed allocations by state, with and without the commercial portion of the RSA deduction. These state quota allocations are preliminary and are subject to a reduction if there are 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 overages will be included in the final rule implementing these specifications that is published in the **Federal Register**.

TABLE 1.—2006 PROPOSED INITIAL SUMMER FLOUNDER STATE COMMERCIAL QUOTAS

State	Percent share	Commercial quota		Commercial quota less RSA	
		lb	kg[1]	lb	kg[1]
ME	0.04756	6,732	3,053	6,630	3,007
NH	0.00046	65	30	64	29
MA	6.82046	965,368	437,891	950,809	431,287
RI	15.68298	2,219,769	1,006,887	2,186,293	991,702
CT	2.25708	319,467	144,910	314,649	142,725
NY	7.64699	1,082,355	490,956	1,066,032	483,552
NJ	16.72499	2,367,255	1,073,787	2,331,554	1,057,593
DE	0.01779	2,518	1,142	2,480	1,125
MD	2.03910	288,614	130,915	284,262	128,941
VA	21.31676	3,017,174	1,368,590	2,971,672	1,347,950
NC	27.44584	3,884,684	1,762,093	3,826,099	1,735,519
Total	100.00001	14,154,000	6,420,254	13,940,543	6,323,430

[1] Kilograms are as converted from pounds and do not sum to the converted total due to rounding.

Scup

Scup was last formally assessed in June 2002 at the 35th Northeast Regional Stock Assessment Workshop (SAW). At that time, the Stock Assessment Review Committee (SARC 35) indicated that the species was no longer overfished, but that stock status with respect to overfishing currently could not be evaluated. However, more recent information indicates that the scup spawning stock biomass (SSB) has decreased. The 2004 biomass index, *i.e.*, the Center's spring survey 3-year average (2003 through 2005), for scup SSB was 0.69 kg/tow, about 75 percent below the biomass threshold of 2.77 kg/tow. Therefore, the stock is now considered overfished.

The proposed scup specifications for 2006 are based on an exploitation rate (21 percent) in the rebuilding schedule that was approved when scup was added to the FMP in 1996, prior to passage of the Sustainable Fisheries Act (SFA). Subsequently, to comply with the SFA amendments to the Magnuson-Stevens Act, the Council prepared Amendment 12 to the FMP, which proposed to maintain the existing rebuilding schedule for scup established by Amendment 8 to the FMP. On April 28, 1999, NMFS disapproved the proposed rebuilding plan for scup because the rebuilding schedule did not appear to be sufficiently risk-averse. Later, however, NMFS advised the Council that use of the exploitation rate as a proxy for F would be acceptable and risk-averse. Therefore, the proposed scup specifications for 2006 are based on an exploitation rate of 21 percent. NMFS considers the risks associated with the disapproved rebuilding plan as not applicable to the proposed specifications because they apply only for 1 fishing year and will be reviewed, and modified as appropriate, by the Council and NMFS annually. Furthermore, setting the scup specifications using an exploitation rate of 21 percent is a more risk-averse approach to managing the resource than not setting any specifications until the Council submits, and NMFS approves, a revised rebuilding plan that complies with all Magnuson-Stevens Act requirements. The Council plans to address this deficiency through an Amendment to the FMP to be prepared in 2006.

Given the uncertainty associated with the spring survey, the Council and Board agreed with the Scup Monitoring Committee recommendation to set a TAC and TAL for 1 year only. A recommendation on the TAC for 2006 is complicated by the lack of information on discards and mortality estimates for fully recruited fish. The Scup Monitoring Committee agreed that, based on an assumption that the spring survey value in 2006 would be the same as for 2004, a TAL of 16.27 million lb (7,380 mt) would achieve the target exploitation rate for 2006. Estimated discards (3.52 million lb (1,597 mt)) were added to the TAL to derive a TAC of 19.79 million lb (8,977 mt). The Council and Board adopted the Monitoring Committee's TAC and TAL recommendations. NMFS is proposing to implement this TAC and TAL because it is considered likely to achieve the 21-percent exploitation rate required by the FMP.

The FMP specifies that the 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, *i.e.*, TAC minus discards equals TAL. The commercial TAC, discards, and TAL (commercial quota) are 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 commercial TAC would be 15,436,200 lb (7,002 mt) and the recreational TAC would be 4,353,800 lb (1,975 mt). After deducting estimated discards (3.36 million lb (1,524 mt) for the commercial sector and 160,000 lb (73 mt) for the recreational sector), the initial commercial quota would be 12,076,200 lb (5,478 mt) and the recreational harvest limit would be 4,193,800 million lb (1,902 mt). The Council and Board also agreed to set aside 184,690 lb (84 mt) of the scup TAL for research activities. Deducting this RSA would result in a commercial quota of

11,932,142 lb (5,412 mt) and a recreational harvest limit of 4,153,168 lb (1,884 mt).

The Council and the Board recommended an increase in the base commercial scup possession limit during the Winter II period (November–December) from 1,500 lb (680 kg) to 2,000 lb (907 kg). NMFS is proposing to implement this recommendation because it would increase opportunities to reach the Scup Winter II quota while reducing scup discards. NMFS also is proposing the Council and Board's recommendation to maintain the current initial possession limit of 30,000 lb (13.6 mt) for Winter I. The Winter I possession limit would be reduced to 1,000 lb (454 kg) when 80 percent of the quota is projected to be reached.

Table 2 presents the 2006 commercial allocation recommended by the Council, with and without the 184,690-lb (84-mt) RSA deduction. These 2006 allocations are preliminary and may be subject to downward adjustment in the final rule implementing these specifications due to 2005 overages, based on the procedures for calculating overages described earlier.

TABLE 2.—2005 PROPOSED INITIAL TAC, COMMERCIAL SCUP QUOTA, AND POSSESSION LIMITS

Period	Percent	TAC in lb (mt)	Discards in lb (mt)	Commercial quota in lb (mt)	Commercial quota less RSA in lb (mt)	Possession limits in lb (kg)
Winter I	45.11	6,963,270 (3,159)	1,515,696 (688)	5,447,574 (2,471)	5,382,589 (2,442)	[1]30,0001 (13,608)
Summer	38.95	6,012,400 (2,727)	1,308,720 (594)	4,703,680 (2,134)	4,647,569 (2,108)	([3])
Winter II	15.94	2,460,530 (1,116)	535,584 (243)	1,924,946 (873)	1,901,983 (863)	2,000 (907)
Total[2]	100.00	15,436,200 (7,002)	3,360,000 (1,524)	12,076,200 (5,478)	11,932,142 (5,412)	.....

[1] The Winter I landing limit would drop to 1,000 lb (454 kg) upon attainment of 80 percent of the seasonal allocation.
[2] Totals subject to rounding error.
[3] n/a—Not applicable.

The final rule to implement Framework 3 to the FMP (68 FR 62250, November 3, 2003) implemented 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 rolled over to the quota for the Winter II period. In any year that NMFS determines that the landings of scup during Winter I are less than the Winter I quota for that year, NMFS will, through notification in the **Federal Register**, increase the Winter II quota for that year by the amount of the Winter I underharvest, and adjust the Winter II possession limits consistent with the amount of the quota increase. In 2004 and 2005, NMFS transferred substantial amounts of unused Winter I quota to the Winter II period. The Council and the Board recommended an increase in the Winter II possession limit-to-rollover amount ratios, i.e., an increase from 500 lb (227 kg) to 1,500 lb (680 kg) per 500,000 lb (227 mt) of unused Winter I period quota transferred to the Winter II period. NMFS is proposing to implement this recommendation, as presented in Table 3, because it would increase the likelihood of achieving the Scup Winter II quota.

TABLE 3.—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
2,000	907	0–499,999	0–227	0	0	2,000	907
2,000	907	500,000–999,999	227–454	1,500	680	3,500	1,588
2,000	907	1,000,000–1,499,999	454–680	3,000	1,361	5,000	2,268
2,000	907	1,500,000–1,999,999	680–907	4,500	2,041	6,500	2,948
2,000	907	2,000,000–2,500,000	907–1,134	6,000	2,722	8,000	3,629

Black Sea Bass

Black sea bass was last assessed in June 2004 at the 39th Northeast Regional SAW. The Stock Assessment Review Committee (SARC 39) indicated that black sea bass were no longer overfished and overfishing was not occurring. The biomass threshold, defined as the maximum value of a 3-year moving average of the Center's spring survey catch-per-tow, is 0.9 kg/tow (the 1977–1979 average). The 2004 biomass index (the 3-year average for 2003–2005) is 1.3 kg/tow, about 44 percent above the threshold. Based on this value, the stock is not overfished.

The target exploitation rate for 2006 is 25 percent, which is based on the current estimate of F_{max} (0.32). The 2006 TAL recommendation is contingent upon assumptions regarding the black sea bass stock size in 2006 and past exploitation rates (specifically, 21 percent in 2003). If the Center's 2006 spring survey biomass index approximates the average value for 2003–2005 (0.396 kg/tow), then the TAL associated with a 25-percent exploitation rate would be 6.36 million lb (2,885 mt). Alternatively, if the 2006 spring survey approximates the average value for 2002–2004 (0.538 kg/tow), then the TAL associated with a 25-percent exploitation rate would be 8.63

million lb (3,915 mt). Given the uncertainty in the spring survey estimates for the 2003–2005 period, the Black Sea Bass Monitoring Committee recommended a 1-year TAL set at the midpoint between these two TALs, i.e., 7.5 million lb (3,402 mt). The Council and Board rejected the Monitoring Committee recommendation, and instead recommended an 8-million-lb (3,629-mt) TAL for 2006. This TAL lies within the range the Monitoring Committee considered, would be a 2.4-percent decrease from 2005, and equals the TAL established for 2004. NMFS is proposing to implement the Council's and Board's TAL recommendation because it is considered likely to achieve the 25-percent exploitation rate that is required by the FMP.

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; therefore, the initial TAL would be allocated 3.92 million lb (1,778 mt) to the commercial sector and 4.08 million lb (1,851 mt) to the recreational sector. The Council and Board also agreed to set aside 178,956 lb (81 mt) of the black sea bass TAL for research activities. After deducting the RSA, the TAL would be divided into a commercial quota commercial quota of 3,832,312 lb (1,738 mt) and a recreational harvest limit of 3,988,732 lb (1,809 mt).

Other Black Sea Bass Management Measures

Under the current regulations at § 648.144(b)(2), all black sea bass traps or pots must have an escape vent placed in the lower corner of the parlor portion of the pot or trap that complies with one of the following minimum sizes: 1.375 inches (3.49 cm) by 5.75 inches (14.61 cm); a circular vent 2.375 inches (6.03 cm) in diameter; or a square vent with sides of 2 inches (5.08 cm), inside measure. Black sea bass traps constructed of wooden lathes may have instead an escape vent constructed by leaving a space of at least 1.375 inches (3.49 cm) between one set of lathes in the parlor portion of the trap. These requirements have been in effect since February 2002 (66 FR 66348, December 26, 2001). In July 2005, the Commission held an industry workshop to discuss the results of recent scup and black sea bass vent studies and to develop recommendations on pot and trap configurations. Pursuant to § 648.140(b)(6), the Black Sea Bass Monitoring Committee recommended that two vents be required in the parlor portion of the pot or trap and that the minimum circle vent size be increased to 2.5 inches (6.35 cm) in diameter, as recommended at the industry workshop. NMFS is proposing to implement the Council's and Board's vent number and size recommendations because they would allow for greater escapement of sublegal fish and other non-target species black sea bass pots and traps. To allow fishery participants time to comply with the proposed changes to the black sea bass pot and trap gear restrictions, the effective date of this change in regulations would be delayed until January 1, 2007.

In addition, the Council and the Board encouraged individual states, though the Commission, to clarify that the black sea bass total length measurement does not include the caudal fin tendril. In order to prevent confusion among fishery participants, fish samplers, and enforcement personnel, and to provide consistency with the South Atlantic fisheries regulations, which are explicit on this issue, NMFS is proposing to amend the total length definition to explicitly exclude any caudal filament in the measurement of black sea bass.

Classification

NMFS has determined that the proposed rule is consistent with the Summer Flounder, Scup, and Black Sea Bass FMP, and has preliminarily determined that the rule is consistent with the Magnuson-Stevens Act and other applicable laws.

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

An IRFA was prepared that describes the economic impact this proposed rule, if adopted, would have on small entities.

A description of the action, why it is being considered, and the legal basis for this action are contained in the preamble to this proposed rule. This proposed rule does not duplicate, overlap, or conflict with other Federal rules. A copy of the complete IRFA can be obtained from the Council (see **ADDRESSES**). A summary of the economic analysis follows.

The economic analysis assessed the impacts of the various management alternatives. The no action alternative is defined as follows: (1) No proposed specifications for the 2006 summer flounder, scup, and black sea bass fisheries would be published; (2) the indefinite management measures (minimum mesh sizes, minimum sizes, possession limits, permit and reporting requirements, etc.) would remain unchanged; (3) there would be no quota set-aside allocated to research in 2006; (4) the existing black sea bass pot and trap gear restrictions would remain in place; and (5) there would be no specific cap on the allowable annual landings in these fisheries (i.e., there would be no quotas). 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.

Alternative 1 consists of the harvest limits proposed by the Council for summer flounder, and the Council and Board for 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 status quo quotas, which were 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 2006, it would also likely exceed the biological targets specified in the FMP. For clarity, note that this proposed rule would implement quotas contained in Alternative 1 for scup and black sea bass (the Council and Board's preferred alternatives for these fisheries) and in Alternative 2 for summer flounder.

Table 4 presents the 2006 initial TALs, RSA, commercial quotas adjusted for RSA, and preliminary recreational harvests for the fisheries under these three quota alternatives.

TABLE 4.—COMPARISON, IN LB (MT), OF THE ALTERNATIVES OF QUOTA COMBINATIONS REVIEWED

	Initial TAL	RSA	Preliminary adjusted commercial quota *	Preliminary recreational harvest;
Quota Alternative 1 (Preferred)				
Summer Flounder	26.0 million (11,793)	355,762 (161)	15.39 million (6,979)	10.26 million. (4,653)
Scup	16.27 million (7,380)	184,690 (84)	11.93 million (5,412)	4.15 million. (1,884)
Black Sea Bass	8.0 million (3,629)	178,956 (81)	3.83 million (1,738)	3.99 million. (1,809)
Quota Alternative 2 (Most Restrictive)				
Summer Founder	23.59 million (10,700)	355,762 (161)	13.94 million (6,326)	9.29 million. (4,217)
Scup	10.77 million (4,885)	184,690 (84)	7.65 million (3,468)	2.94 million. (1,333)
Black Sea Bass	7.5 million (3,402)	178,956 (81)	3.59 million (1,627)	3.73 million. (1,694)
Quota Alternative 3 (Status Quo-Least Restrictive)				
Summer Flounder	30.3 million (13,744)	355,762 (161)	17.97 million (8,149)	11.98 million. (5,433)
Scup	16.6 million (7,484)	184,690 (84)	12.12 million (5,496)	4.2 million. (1,905)
Black Sea Bass	8.2 million (3,719)	178,956 (81)	3.93 million (1,782)	4.09 million. (1,856)

* Note that preliminary quotas are provisional and may change to account for overages of the 2005 quotas.

Table 5 presents the percent change associated with each of these commercial quota alternatives (adjusted for RSA) compared to the final adjusted quotas for 2005.

TABLE 5.—PERCENT CHANGE ASSOCIATED WITH 2006 ADJUSTED COMMERCIAL QUOTA ALTERNATIVES COMPARED TO 2005 COMMERICAL ADJUSTED QUOTAS

	Total changes including overages and RSA		
	Quota Alternative 1 (preferred)	Quota Alternative 2 (most restrictive)	Quota Alternative 3 * (least restrictive)
Black Sea Bass			
Aggregate Change	−14%	−22%	+ less than 1%
Scup			
Aggregate Change	−2%	−37%	− less than 1%
Summer Flounder			
Aggregate Change	−3%	−9%	−1%

* Denotes status quo management measures.

All vessels that would be impacted by this proposed rulemaking are considered to be small entities; therefore, there would be no disproportionate impacts between large and small entities. 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 proposed 2006 quotas could affect 2,162 vessels that held a Federal summer flounder, scup, and/or black sea bass permit in 2004. However, the more immediate impact of this rule will likely be felt by the 906 vessels that actively participated (*i.e.*, landed these species) in these fisheries in 2004.

The Council estimated the total revenues derived from all species landed by each vessel during calendar year 2004 to determine a vessel's dependence and revenue derived from a particular species. This estimate provided the base from which to compare the effects of the proposed quota changes from 2005 to 2006.

The analysis of the harvest limits in Alternative 1 indicated that these

harvest levels would result in revenue losses of less than 5 percent for 208 vessels and greater than 5 percent for 698 vessels. More specifically, vessels are projected to incur revenue reductions as follows: 5–9 percent, 108 vessels; 10–19 percent, 573 vessels; 20–29 percent, 13 vessels; 30–39 percent, 0 vessels; 40–49 percent, 3 vessels; and greater or equal to 50 percent, 2 vessels. Most commercial vessels showing revenue reduction of greater than 5 percent are concentrated in MA, RI, NY, NJ, and NC. The Council also examined the level of ex-vessel revenues for the impacted vessel to assess further impacts. While the analysis presented above indicates that in relative terms a large number of vessels (698) are likely to be impacted with revenue reductions of more than 5 percent, dealer data show that a large proportion of those vessels (207, or 30 percent) had small gross sales (less than $1,000), thus indicating that the dependence on fishing is likely very small.

The Council also analyzed changes in total gross revenue that would occur as a result of the quota alternatives. Assuming 2004 ex-vessel prices (summer flounder—$1.59/lb; scup—$0.60/lb; and black sea bass—$1.54/lb), the 2006 quotas in the proposed rule would decrease total summer flounder, scup, and black sea bass revenues by approximately $3.98 million, $170,000, and $220,000 respectively, relative to expected 2005 revenues.

Assuming that the decrease in total ex-vessel gross revenue associated with the proposed rule for each fishery is distributed equally among the vessels that landed those species in 2004, the average decrease in gross revenue per vessel associated with the preferred quota would be $5,203 for summer flounder, $394 for scup, and $387 for black sea bass. The number of vessels landing summer flounder, scup, and black sea bass in 2004 was 765, 432, and 569, respectively.

The overall reduction in ex-vessel gross revenue associated with the three species combined in 2006 compared to 2005 is approximately $4.37 million (assuming 2004 ex-vessel prices) under the proposed rule. If this amount is distributed equally among the 906 vessels that landed summer flounder, scup, and/or black sea bass in 2004, the average decrease in revenue would be approximately $4,823 per vessel. It is possible that, given the potential decrease in landings of summer flounder, scup, and black sea bass, prices for these species may increase, if all other factors remain constant. If this occurs, an increase in the price for summer flounder, scup, and black sea bass may mitigate some of the revenue reductions associated with lower quantities of quota available under this proposed rule.

Complete revenue analysis for 2007 and 2008 cannot be completed at this time because the Council is recommending the 2007 and 2008 TALs for summer flounder only. Assuming that the condition of the scup and black sea bass fisheries do not significantly change in 2007 and 2008 as compared to 2006, then the impacts of the summer flounder quotas in 2007 and 2008 will be similar to those described above. If ex-vessel prices for these species change as a consequence of changes in landings, then the associated revenue changes could be different than those estimated above. Complete revenue analysis for the 2007 and 2008 fishing years will be conducted as part of the proposed rules for the 2007 and 2008 summer flounder, scup, and black sea bass specifications, respectively, once the Council recommends TALs for scup and black sea bass.

The analysis of the harvest limits of Alternative 2 (i.e., the most restrictive harvest limits) indicated that all 906 vessels would incur revenue losses equal to or greater than 5 percent. More specifically, vessels are projected to incur revenue reductions as follows: 5–9 percent, 114 vessels; 10–19 percent, 142 vessels; 20–29 percent, 597 vessels; 30–39 percent, 48 vessels; 40–49 percent, 3 vessels; and greater or equal to 50 percent, 2 vessels. As in the analysis for Alternative 1, it is likely that a large proportion of the impacted vessels are likely to have small gross sales (less than $1,000), thus indicating that the dependence on fishing is likely very small.

Assuming 2004 ex-vessel prices (see above), the 2006 quotas in Alternative 2 would decrease total summer flounder, scup, and black sea bass revenues by approximately $6.28 million, $2.75 million, and $310,000 respectively, relative to expected 2005 revenues. Assuming that the decrease in total ex-vessel gross revenue associated with Alternative 2 is distributed equally among the vessels that landed those species in 2004, the average decrease in gross revenue per vessel associated with Alternative 2 would be $8,209 for summer flounder, $6,366 for scup, and $545 for black sea bass.

The overall reduction in gross revenue associated with the three species combined in 2006 compared to 2005 is approximately $9.34 million (assuming 2004 ex-vessel prices) under Alternative 2. If this amount is distributed evenly among the 906 vessels that landed summer flounder, scup, and/or black sea bass in 2004, the average decrease in revenue would be approximately $10,309 per vessel.

The analysis of the harvest limits in Alternative 3 (i.e., the least restrictive harvest limits) indicated that these harvest levels would result in revenue increases for 372 vessels, losses of less than 5 percent for 504 vessels and losses of greater than 5 percent for 30 vessels. As in the analysis for Alternative 1, it is likely that a large proportion of the impacted vessels are likely to have small gross sales (less than $1,000), thus indicating that the dependence on fishing is likely very small.

Assuming 2004 ex-vessel prices (see above), the 2006 quotas in Alternative 3 would increase total summer flounder revenues by $110,000, and decrease total scup and black sea bass revenues by $70,000 and $60,000, respectively, relative to expected 2005 revenues. Assuming that the change in total ex-vessel gross revenue associated with Alternative 3 is distributed equally among the vessels that landed those species in 2004, the average change in gross revenue per vessel associated with Alternative 3 would be a $144 increase for summer flounder, a $162 decrease for scup, and a $105 decrease for black sea bass.

The overall reduction in gross revenue associated with the three species combined in 2006 compared to 2005 is approximately $20,000 (assuming 2004 ex-vessel prices) under Alternative 3. If this amount is distributed evenly among the 906 vessels that landed summer flounder, scup, and/or black sea bass in 2004, the average decrease in revenue would be approximately $22 per vessel.

For the analysis of the alternative recreational harvest limits, the 2006 recreational harvest limits were compared with previous years through 2004, the most recent year with complete recreational data. Landings statistics from the last several years show that recreational summer flounder landings have generally exceeded the recreational harvest limits, ranging from a 5-percent overage in 1993 to a 122-percent overage in 2000. In 2002, recreational landings were 8.01 million lb (3,633 mt), 18 percent below the recreational harvest limit of 9.72 million lb (4,409 mt). In 2003, recreational landings were 11.64 million lb (5,280 mt), 25 percent above the recreational harvest limit of 9.28 million lb (4,209 mt). In 2004, recreational landings were 10.76 million lb (4,881 mt), 10 percent below the recreational harvest limit of 11.98 million lb (5,434 mt).

The Alternative 1 summer flounder 2006 recreational harvest limits

(adjusted for RSA) of 10.26 million lb (4,654 mt), would be a 14-percent decrease from the 2005 recreational harvest limit of 11.98 million lb (5,434 mt), and would represent a 4-percent decrease from 2004 landings. The 2006 summer flounder Alternative 2 recreational harvest limit of 9.29 million lb (4,217 mt), would be 22 percent lower than the 2005 recreational harvest limit, and would represent a 14-percent decrease from 2004 recreational landings. The 2006 summer flounder Alternative 3 (status quo) recreational harvest limit of 11.98 million lb (5,433 mt) would be a less than 1-percent decrease from the 2005 recreational harvest limit (due to the increase in summer flounder RSA for 2005) and would represent an 11-percent increase from 2004 recreational landings.

If Alternative 1 or 2 is implemented, it is possible that more restrictive management measures (lower possession limits, larger minimum size limits, and/or shorter open seasons) may be required to prevent anglers from exceeding the 2006 recreational harvest limit, depending on the effectiveness of the 2005 recreational management measures. While it is likely that proposed management measures would restrict the recreational fishery for 2006, and that these measures may cause some decrease in recreational satisfaction, there is no indication that any of these measures may lead to a decline in the demand for party/charter boat trips. The market demand for this sector is relatively stable. Currently, neither behavioral nor demand data are available to estimate how sensitive party/charter boat anglers might be to proposed fishing regulations. It is likely that party/charter anglers will target other species when faced with potential reductions in the amount of summer flounder, scup, and black sea bass that they are allowed to catch. The Council intends to recommend specific measures to attain the 2006 summer flounder recreational harvest limit in December 2005, and will provide additional analysis of the measures upon submission of its recommendations in early 2006.

Scup recreational landings declined over 89 percent for the period 1991 to 1998, then increased by 517 percent from 1998 to 2000. In 2002, recreational landings were 3.62 million lb (1,642 mt), or 33 percent above the recreational harvest limit of 2.71 million lb (1,229 mt). In 2003, recreational landings were 9.33 million lb (4,232 mt), or 132 percent above the recreational harvest limit of 4.01 million lb (1,819 mt). In 2004, recreational landings were 4.01 million lb (1,819 mt), or 1 percent above the recreational harvest limit of 3.96 million lb (1,796 mt). Under the proposed rule, the adjusted scup recreational harvest limit for 2006 would be 4.15 million lb (1,884 mt), 5 percent above the 2005 recreational harvest limit, and would represent a 5-percent decrease from 2004 recreational landings. The Alternative 2 scup recreational harvest limit of 2.94 million lb (1,333 mt) for 2006 would be 26 percent less than the 2005 recreational harvest limit, and 33 percent less than 2004 recreational landings. The Alternative 3 scup recreational harvest limit of 4.2 million lb (1,905 mt) for 2006 would be an increase of 6 percent from the 2005 recreational harvest limit and would represent a 4-percent decrease from 2004 recreational landings. Under Alternative 2, more restrictive management measures might be required to prevent anglers from exceeding the 2006 recreational harvest limit, depending largely upon the effectiveness of the 2005 recreational management measures. As described above for the summer flounder fishery, the effect of greater restrictions on scup party/charter boats is unknown at this time. Overall, positive social and economic impacts are expected to occur as a result of the scup recreational harvest limit for 2006 because current opportunities for recreational fishing would be maintained. The Council intends to recommend specific measures to attain the 2006 scup recreational harvest limit in December 2005, and will provide additional analysis of the measures upon submission of its recommendations early in 2006.

Black sea bass recreational landings increased slightly from 1991 to 1995. Landings decreased considerably from 1996 to 1999, and then substantially increased in 2000. In 2002, 2003, and 2004, recreational landings were 4.35 million lb (1,973 mt), 3.29 million lb (1,492 mt), and 1.94 million lb (880 mt), respectively. For the recreational fishery, the adjusted 2006 harvest limit under Alternative 1 would be 3.99 million lb (1,809 mt), a 3-percent decrease from the 2005 recreational harvest limit and a 106-percent increase from 2004 recreational landings. Under Alternative 2, the 2006 recreational harvest limit would be 3.73 million lb (1,694 mt), a 10-percent decrease from the 2005 recreational harvest limit and a 92-percent increase from 2004 recreational landings. The 2006 recreational harvest limit under Alternative 3 would be 4.09 million lb (1,856 mt), a less than 1-percent increase from the 2005 recreational harvest limit and a 111-percent increase from 2004 recreational landings. Under Alternatives 1 and 2, although the recreational harvest limit would be reduced relative to the 2005 level, it is not expected that more restrictive management measures would be necessary to constrain landings if 2005 landings are similar to those in 2003 or 2004. Because Alternative 3 is the status quo, reduced from the 2005 level only due to the larger RSA for 2006, it is not anticipated that more restrictive measures would be required in 2006 to constrain the fishery. The Council intends to recommend specific measures to attain the 2006 black sea bass recreational harvest limit in December 2005, and will provide additional analysis of the measures upon submission of its recommendations early in 2006.

In summary, the proposed 2006 commercial quotas and recreational harvest limits, after accounting for the proposed RSA amounts, would result in substantially lower quantities of summer flounder in 2006 versus 2005. Anticipated changes in scup and black sea bass landings are not significant. The proposed specifications were chosen because they allow for the maximum level of landings, while still achieving 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 proposed commercial scup possession limits for Winter I (30,000 lb (13.6 mt) per trip, to be reduced to 1,000 lb (454 kg) upon attainment of 80 percent of the Winter I quota) and Winter II (2,000 lb (907 kg) per trip) and the amount of increase to the Winter II possession limit-to-rollover amount ratio were chosen as an appropriate balance between the economic concerns of the industry (*i.e.*, landing enough scup to make the trip economically viable) and the need to ensure the equitable distribution of the quota over each period. The proposed Winter I possession limit specifically coordinates with the 30,000-lb (13.6-mt) landing limits per 2-week period recommended by the Commission (beginning in 2005) to be implemented by most states, while satisfying concerns about enforcement of possession limits. Continuation of the Winter I possession limit is not expected to result in changes to the economic or social aspects of the fishery relative to 2005. In 2004 and 2005, NMFS transferred substantial amounts

of unused Winter I quota to the Winter II period. The increase in the Winter II possession limit and in the possession limit-to-rollover amount ratio is intended to help convert scup discards to landings, thereby improving the efficiency of the commercial scup fishery, and increasing the likelihood of achieving the Scup Winter II quota.

Requiring a second vent in the parlor portion of black sea bass traps and increasing the circular vent size from 2.375 inches (6.0 cm) to 2.5 inches (6.4 cm), as recommended at a 2005 black sea bass commercial industry workshop, would have positive economic and social impacts in the long-term. Reducing the mortality of sublegal fish would improve the efficiency of the commercial black sea bass fishery (via increasing yields and amount of mature fish in the stock). The cost to the industry to implement the changes varies depending on type of pot/trap (*i.e.*, wooden or wire). The cost of adding or replacing a circular vent would range between $3.08 and $3.24 per pot/trap and would take approximately 10 minutes per wire pot/trap. Circular vents are not typically found in wooden traps due to structural integrity concerns. The cost of adding an additional vent to a wooden trap would range between $2.68 and $5.36 per trap and would take approximately 10–20 minutes per trap. Because the effective date of the proposed changes would be delayed until January 1, 2007, the annualized cost of the proposed regulations would be half of those described above. The Council indicates that, because complete cost data for the black sea bass pot/trap fishery are not available, it is not possible to calculate how the proposed gear changes would affect the total cost of production for black sea bass pot/trap fishermen. However, the Council estimates that total trap production costs would increase by less than 5 percent.

The commercial portion of the summer flounder RSA allocations in the proposed rule, if made available to the commercial fishery, could be worth as much as $339,397 dockside, based on a 2004 ex-vessel price of $1.59/lb. Assuming an equal reduction in fishing opportunity among all active vessels (*i.e.*, the 765 vessels that landed summer flounder in 2004), this could result in a per-vessel potential revenue loss of approximately $444. Changes in the summer flounder recreational harvest limit as a result of the 355,762–lb (161,479-kg) RSA are not expected to be significant as the deduction of RSA from the TAL would result in a relatively marginal decrease in the recreational harvest limit from 9.4 million lb (4,282 mt) to 9.3 million lb (4,217 mt). Because this is a marginal change, it is unlikely that the recreational possession, size, or seasonal limits would change as the result of the RSA allocation.

The scup RSA allocation, if made available to the commercial fishery, could be worth as much as $86,435 dockside, based on a 2004 ex-vessel price of $0.60/lb. Assuming an equal reduction in fishing opportunity for all active commercial vessels (*i.e.*, the 432 vessels that landed scup in 2004), this could result in a loss of potential revenue of approximately $200 per vessel. The deduction of RSA from the TAL results in a relatively marginal decrease in the recreational harvest limit from 4.19 million lb (1,902 mt) to 4.15 million lb (1,884 mt). It is unlikely that scup recreational possession, size, or seasonal limits would change as the result of the RSA allocation.

The black sea bass RSA allocation, if made available to the commercial fishery, could be worth as much as $135,040 dockside, based on a 2004 ex-vessel price of $1.54/lb. Assuming an equal reduction in fishing opportunity for all active commercial vessels (*i.e.*, the 569 vessels that caught black sea bass in 2004), this could result in a loss of approximately $237 per vessel. The deduction of RSA from the TAL would result in a relatively marginal decrease in recreational harvest from black sea bass recreational harvest limit from 4.08 million lb (1,851 mt) to 3.99 million lb (1,809 mt). It is unlikely that the black sea bass possession, size, or seasonal limits would change as the result of this RSA allocation.

Overall, long-term benefits are expected as a result of the RSA program. The four conditionally-approved projects would provide improved data and information regarding the size composition of the scup population, the influence of Mid-Atlantic species seasonal migration on stock abundance estimates, angler behavior under various recreational management scenarios, and black sea bass habitat pot efficiency. The results of these projects will provide needed information on high-priority fisheries management issues related to Mid-Atlantic fisheries management. If the total amount of quota set-aside is not awarded for any of the three fisheries, the unused set-aside amount will be restored to the appropriate fishery's TAL. 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 if the RSAs are utilized.

There are no new reporting or recordkeeping requirements contained in any of the alternatives considered for this action.

List of Subjects in 50 CFR Part 648

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: November 15, 2005.

James W. Balsiger,

Acting Director, Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

For the reasons stated in the preamble, 50 CFR part 648 is proposed to be 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 § 648.2, add a second sentence to the definition of ''Total Length'' to read as follows:

§ 648.2 Definitions.

* * * * *

Total Length (TL) * * * For black sea bass, *Total Length (TL)* means the straight-line distance from the tip of the snout to the end of the tail (caudal fin), excluding any caudal filament, while the fish is lying on its side.

* * * * *

3. In § 648.144, revise paragraph (b)(2) to read as follows:

§ 648.144 Gear restrictions.

* * * * *

(b) * * *

(2) All black sea bass traps or pots must have two escape vents placed in lower corners of the parlor portion of the pot or trap that each comply with one of the following minimum size requirements: 1.375 inches by 5.75 inches (3.5 cm by 14.6 cm); a circular vent of 2.5 inches (6.4 cm) in diameter; or a square vent with sides of 2 inches (5.1 cm), inside measure; however, black sea bass traps constructed of wood lathes may have instead escape vents constructed by leaving spaces of at least 1.375 inches (3.5 cm) between two sets of lathes in the parlor portion of the trap. These dimensions for escape vents and lathe spacing may be adjusted pursuant to the procedures in § 648.140.

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