shark fins, respectively, the estimated revenue for the first trimester in 2006 from the 113.8 mt in overharvest was $317,998. However, a closure during the first trimester of 2007 would result in disrupted revenue flows and result in negative economic impacts.

Overall, the economic impact of reduced 2007 LCS quota for both the South Atlantic and Gulf of Mexico regions would result in a total economic impact of $648,462 in reduced revenues. While those past excess revenues exceed the 2007 estimated reductions in revenues from LCS, it is still likely that fishing operations will face economic impacts due to dramatic cash flow reductions in 2007 and, potentially, beyond since it is likely that 2006 excess revenues were not retained by fishermen to offset future shortfalls since reductions in quota were likely unanticipated at the time. Some of these impacts might be mitigated somewhat for vessels that can fish in other regions or fisheries. However, these opportunities will likely be limited and result in additional costs associated with adjusting current fishing practices. The Agency received public comment indicating that quota reductions in the golden tilefish fishery will also impact participants fishing with bottom longline gear in the Cape Canaveral, FL, area as many of these fishermen depend on LCS and golden tilefish.

Alternative A2, the preferred alternative, which would close the entire South Atlantic region for LCS during the first trimester of 2007 and open the entire region including the mid-Atlantic shark closed area region in July 2007, pending availability of quota, could minimize the economic costs associated with the South Atlantic regional overharvest. As described above for Alternative A1, the 2006 overharvest is estimated to have a direct revenue impact on regional commercial shark fishing activity of approximately $338,242 for the South Atlantic and $310,220 for the Gulf of Mexico. In 2005, 46 vessels reported landings in the South Atlantic region, indicating that the LCS closure could result in a loss of revenue of approximately $7,353 per vessel. There were also 86 vessels reporting landings in the Gulf of Mexico, indicating that the LCS reduced quota in this region for the first trimester could result in a loss of revenues of approximately $3,607 per vessel. However, this alternative might provide an additional month of fishing opportunities for vessels that may not be able to participate in the South Atlantic regional fishery during the first six months of 2007. Compared to pre-closure landings (2002–2004), landings in 2005 of LCS decreased by 13.9 mt dw which may have been a result of the closed area. This additional month of access to the mid-Atlantic shark closed area during the month of July is estimated to potentially result in an additional $34,188 in gross shark revenues based on the difference in landings that may occur as a result of reopening the mid-Atlantic shark closed area.

Alternative A3 would open the mid-Atlantic shark closed area on January 1, 2007, through July 31, 2007, dependant on available quota for LCS during the first and second trimester seasons of 2007. Given the preliminary landings data as of November 13, 2006 (71 FR 66154), it is likely quota will not be available since the data indicate that extensive overharvests in the South Atlantic region would result in no available quota in that region. The impacts of this alternative would be similar to the preferred alternative or the status quo alternative as lack of available quota would prevent fishing in the South Atlantic region during the first trimester. In addition, updated landings data for LCS in the Gulf of Mexico region indicate that a transfer of LCS quota from the Gulf of Mexico region to the South Atlantic region is no longer a feasible option. This alternative is not preferred because the preferred alternative achieves similar objectives, yet ensures that the ecological benefits of maintaining the mid-Atlantic shark closed area are maintained through June 2007.

Alternatives (A4 and A5) were also considered. These two alternatives would have modified the percent of the annual baseline quota each region received based on recent harvest (A4) or would have spread the impacts of the current overharvest out over several years (A5). These two alternatives were not preferred given the data used for modifying the current regional allocation did not consider the overharvest (logbooks from 2006 are not available for analyses yet) and given the Agency's decision to amend shark management based on the results of the latest assessments (November 7, 2006; 71 FR 65086).

List of Subjects in 50 CFR Part 635

Fisheries, Fishing, Fishing vessels, Foreign relations, Imports, Penalties, Reporting and recordkeeping requirements, Treaties.

Dated: December 7, 2006.

William T. Hogarth,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

■ For reasons set out in the preamble, 50 CFR part 635 is amended as follows:

PART 635—ATLANTIC HIGHLY MIGRATORY SPECIES

■ 1. The authority citation for part 635 continues to read as follows:

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

■ 2.In § 635.21, paragraph (d)(1) is revised to read asfollows:

§ 635.21 Gear operation and deployment restrictions.

* * * * *

(d) * * *

(1) If bottom longline gear is on board a vessel issued a permit under this part 635, persons on board that vessel may not fish or deploy any type of fishing gear in the mid-Atlantic shark closed area from January 1 through July 31 each calendar year, except that in 2007 the mid-Atlantic shark closed area will be closed from January 1 through June 30 and may open in July, contingent upon available quota.

* * * * *

[FR Doc. 06–9667 Filed 12–8–06; 2:52 pm]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

RIN 0648–AT60

[Docket No. 061020273–6321–02; I.D. 101606A]

Fisheries of the Northeastern United States; Summer Flounder, Scup, and Black Sea Bass Fisheries; 2007 Summer Flounder, Scup, and Black Sea Bass Specifications

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

ACTION: Final rule.

SUMMARY: NMFS issues final specifications for the 2007 summer flounder, scup, and black sea bass fisheries. This final rule specifies allowed harvest limits for both commercial and recreational fisheries, including commercial scup possession limits. This action prohibits federally permitted commercial vessels from

landing summer flounder in Delaware in 2007 due to continued quota repayment from previous year's overages.

The actions of this final rule are necessary to comply with regulations of implementing the Summer Flounder, Scup, and Black Sea Bass Fishery Management Plan (FMP) as well as to ensure compliance with the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act).

The intent of this action is to establish harvest levels and other management measures to ensure that target fishing mortality rates (F) or exploitation rates, as specified for these species in the FMP, are not exceeded. In addition, this action implements measures that ensure continued rebuilding of the overfished scup stock and end overfishing in the summer flounder fishery.

DATES: Effective January 1, 2007, through December 31, 2007.

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 used by the Summer Flounder, Scup, and Black Sea Bass Monitoring Committees 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 and the Supplemental Regulatory Impact Review Analysis 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: Michael P. Ruccio, Fishery Policy Analyst, (978) 281–9104.

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 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 may be 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 2007 specifications for these fisheries was provided in the proposed specifications (71 FR 62972, October 27, 2006). That information is not repeated here.

NMFS will establish the 2007 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 2007, the Total Allowable Landings (TAL) must be set equal to $F_{rebuild}$ or the level of fishing mortality that will help ensure that the summer flounder stock is rebuilt by 2010. Therefore, for 2007, $F_{target} = F_{rebuild}$ at 0.15. This complies with the requirement at 50 CFR 648.100 that the agency implement measures (e.g., a TAL) necessary to ensure, with at least a 50–percent probability, that F_{max} will not be exceeded. This provision gives NMFS the ability to meet the statutory obligation under section 304 of the Magnuson-Stevens Act to rebuild the summer flounder stock to its target biomass within the statutory 10-year period.

The TAL associated with the target F 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 2007.

This final rule implements the specifications contained in the October 27, 2006, proposed rule: A summer flounder TAL of 12.983 million lb (5,889 mt) for 2007. The TAL for 2007 is allocated 7,789,800 lb (3,533 mt) to the commercial sector and 5,193,200 lb (2,356 mt) to the recreational sector. This TAL is expected to have at least a 75–percent probability of achieving the target F of 0.15 in 2007, if the 2006 TAL and assumed discard levels are not exceeded, and is also expected to allow for rebuilding of the stock to the target biomass by 2010.

Four research projects that would utilize the full summer flounder research set-aside (RSA) of 389,490 lb (177 mt) have been conditionally approved by NMFS and are currently awaiting notice of award. If a 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 in the **Federal Register**.

Consistent with the revised quota setting procedures for the FMP found at 50 CFR 648.100(a)(1)(ii), summer flounder overages are determined based upon landings for the 2005 calendar year that were not accounted for in the 2006 final rule (70 FR 77060, December 29, 2005) and any current fishing year overages through October 31, 2006. Table 1 summarizes, for each state, the commercial summer flounder percent share, the 2007 commercial quota (both initial and less the RSA), the quota reductions from overages as described above, and the resulting final adjusted 2007 commercial quota.

TABLE 1. FINAL STATE-BY-STATE COMMERCIAL SUMMER FLOUNDER ALLOCATIONS FOR 2007

State	Percent Share	Initial Quota		Initial Quota, Less RSA		Quota Overages (through 10/31/06)[1]		Adjusted Quota less RSA[2]	
		lb	kg	lb	kg	lb	kg	lb	kg
ME	0.04756	3,705	1,681	3,594	1,630	0	0	3,594	1,630
NH	0.00046	36	16	35	16	0	0	35	16
MA	6.82046	531,300	240,998	515,361	233,768	30,046	13,629	485,315	220,139
RI	15.68298	1,221,673	554,151	1,185,023	537,526	0	0	1,185,023	537,526
CT	2.25708	175,822	79,753	170,547	77,360	16,470	7,471	154,077	69,889
NY	7.64599	595,685	270,203	577,815	262,097	156,038	70,779	421,777	191,318
NJ	16.72499	1,302,843	590,970	1,263,758	573,241	0	0	1,263,758	573,241
DE	0.01779	1,386	629	1,344	610	50,528	22,920	-49,184	-22,310
MD	2.03910	158,842	72,051	154,077	69,889	0	0	154,077	69,889
VA	21.31676	1,660,533	753,218	1,610,717	730,621	0	0	1,610,717	730,621
NC	27.44584	2,137,976	969,786	2,073,837	940,692	0	0	2,073,837	940,692
Total [3]	100.00	7,789,801	3,533,454	7,556,108	3,427,451	253,082	114,798	7,303,026	3,312,653

[1] 2006 quota overage is determined through comparison of landings for January through October 2006 plus any landings in 2005 in excess of the 2005 quota that were not previously addressed in the 2006 quota specifications, with the final 2006 quota for each state (70 FR 77060, December 29, 2006).

[2] Negative numbers indicate a state allocation in quota repayment status from previous year's overages.

[3] 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 2007 final summer flounder specifications because NMFS does not have authority to establish such subcategories.

The Commission's Summer Flounder, Scup, and Black Sea Bass Management Board (Board) did not adopt a 2007 summer flounder TAL recommendation at their joint meeting with the Council in October 2006, leaving the TAL for state waters undecided. The Board is scheduled to take action on recommending a 2007 TAL on December 10, 2006. There is insufficient time for NMFS to wait until after the Board's decision to submit documents to the **Federal Register** and still publish specifications no later than the Court-mandated January 1 deadline. While it is possible that the Board will adopt the TAL implemented by this rule, it is also possible that the Board will adopt a higher TAL, resulting in to inconsistent 2007 summer flounder TALs for state and Federal waters.

Should the Board adopt a TAL higher than 12.983 million lb (5,889 mt) for 2007, NMFS would be required to take immediate action and suspend the specifications contained in this final rule by utilizing an interim or emergency action in the **Federal Register** to implement alternative measures that ensure that overfishing does not occur in 2007, and that the rebuilding schedule is not compromised by the dual-TAL situation in 2007. These measures may consist of, but are not limited to, the following:

- A complete closure of the commercial and recreational summer flounder fisheries in Federal waters (i.e., the Exclusive Economic Zone (EEZ)) in 2007. Possession of summer flounder by federally permitted vessels in the commercial or recreational for-hire fisheries would not be permitted.
- No summer flounder RSA would be authorized for 2007.
- Commercial landings in states that exceed their percentage allocation of the 7.79–million lb (3,534–mt) quota, which is 60 percent of the 12.983–million-lb (5,889–mt) TAL, from state water commercial landings constitute and overage; these states would be in quota repayment status for 2008 and subsequent years, as needed.
- Conservation equivalency in the recreational fishery would not be approved for 2007 and possibly for subsequent years.

If the Board adopts the 12.983–million-lb (5,889–mt) TAL, then no additional action by NMFS will be necessary to ensure that the 2007 F-target is attained for the 2007 summer flounder fishery.

Delaware Summer Flounder Closure

Table 1 indicates that, for Delaware, the amount of the 2006 summer flounder quota overage (inclusive of overharvest from previous years) is greater than the amount of commercial quota allocated to Delaware for 2007. As a result, there is no quota available for 2007 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 January 1, 2007, landings of summer flounder in Delaware by vessels holding commercial Federal summer flounder fisheries permits are prohibited for the 2007 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 2007 calendar year, unless additional quota becomes available through a transfer.

Scup

This final rule implements the specifications contained in the November 27, 2006, proposed rule: A 13.97–million-lb (6,337–mt) scup TAC and a 12.0–million-lb (5,443–mt) scup TAL. 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, 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 recreational harvest limit is allocated on a coastwide basis. Recreational measures will be the subject of a separate rulemaking early in 2007.

After deducting 360,000 lb (163 mt) of RSA for the approved research projects, the TAL is divided into a commercial quota of 8,895,800 lb (4,035 mt) and a recreational harvest limit of 2,744,200 lb (1,245 mt). If a project is not approved by the NOAA Grants Office, the research quota associated with the disapproved proposal will be restored to the scup TAL through publication in the **Federal Register**.

Consistent with the revised quota setting procedures established for the FMP at 50 CFR 648.120(d)(4)(i), scup overages are determined based upon landings for the Winter I and Summer 2006 periods plus any previously unaccounted for landings from the 2005 calendar year. Table 2 presents the final 2006 commercial scup quota for each period and the reported landings for the 2006 Winter I and Summer periods; there was no overage of the Winter I or Summer quota. In addition, there were no outstanding overages from the 2005 calendar year that were not included in the 2006 final rule (70 FR 77060, December 29, 2005). Therefore, no overage deduction adjustments are required to be made to the 2007 quota as part of this action. After June 30, 2007, NMFS will determine any overages that occur during the Winter II 2006 period. Any quota adjustments to the 2007 Winter II allocation determined to be necessary will be announced in the **Federal Register** in July 2007.

TABLE 2. SCUP PRELIMINARY 2006 LANDINGS BY QUOTA PERIOD

Quota Period	2006 Quota		Reported 2006 landings through 10/31/2006		Quota Overages as of 10/31/2006	
	lb	kg	lb	kg	lb	kg
Winter I	5,382,589	2,441,542	3,557,859	1,613,845	0	0
Summer	4,647,569	2,108,137	3,050,422	1,383,671	0	0
Winter II	1,901,983	862,739	N/A	N/A	N/A	N/A
Total	11,932,141	5,412,419	6,608,281	2,997,516	N/A	N/A

N/A = Not Applicable.

Table 3 presents the commercial scup percent share, 2007 TAC,projected discards, 2007 initial quota (with and without the RSAdeduction), and initial possession limits, by quota period. Toachieve the commercial quotas, this final rule implements aWinter I period (January-April) per-trip possession limit of30,000 lb (13.6 mt), and a Winter II period (November-December)initial per-trip possession limit of 2,000 lb (907 kg). TheWinter I per-trip possession limit will be reduced to 1,000 lb(454 kg) when 80 percent of the commercial quota allocated tothat period is projected to be harvested.

TABLE 3. INITIAL COMMERCIAL SCUP QUOTA ALLOCATIONS FOR 2007 BY QUOTA PERIOD

Quota Period	Percent Share	Total Allowable Catch		Discards		Initial Quota		Initial Quota less RSA		Possession Limits (Per Trip) [1]	
		lb	mt	lb	mt	lb	mt	lb	mt	lb	mt
Winter I	45.11	4,915,456	2,230	775,892	352	4,139,564	1,878	4,012,895	1,820	30,000	13,608
Summer	38.95	4,244,226	1,925	669,940	304	3,574,286	1,621	3,464,914	1,572	N/A	N/A
Winter II	15.94	1,736,918	788	274,168	124	1,462,750	664	1,417,991	643	2,000	907
Total	100.00	10,896,600	4,943	1,720,000	780	9,176,600	4,163	8,895,800	4,035	N/A	N/A

[1] 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.
[2] Metric tons are as converted from pound and may not necessarily add due to rounding.
N/A = Not applicable.

Consistent with the unused Winter I commercial scup quota rollover provisions at 50 CFR 648.120(a)(3), this final rule will maintain the Winter II possession limit-to-rollover amount ratios that had been in place for the

2006 fishing year, as shown in Table 4. The Winter II possession limit will increase by 1,500 lb (680 kg) for each 500,000 lb (227 mt) of unused Winter I period quota transferred, up to maximum of a 8,000 lb (3,629 kg).

TABLE 4. 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	kg	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

The FMP specifies that the TAL is 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 2007.

This final rule implements the specifications contained in the October 27, 2006, proposed rule: A 5.0–million lb (2,270–mt) black sea bass TAL. After deducting 150,000 lb (68 mt) of RSA for the approved research projects, the TAL is divided into a commercial quota of 2,376,500 lb (1,078 mt) and a recreational harvest limit of 2,473,500 lb (1,122 mt). If a project is not approved by the NOAA Grants Office, the research quota associated with the disapproved proposal will be restored to the black sea bass TAL through publication in the **Federal Register**.

Consistent with the revised quota setting procedures for the FMP, black sea bass overages are determined based upon landings for the 2005 calendar year that were not accounted for in the 2006 final rule (70 FR 77060, December 29, 2005) and any current fishing year overages through September 30, 2006. As there were no overages from either period, no overage deduction adjustment to the 2007 commercial quota is necessary.

Comments and Responses

NMFS received 83 written comments during the 21-day comment period for the October 27, 2006, proposed rule. Comments were received from the following groups or individuals: Two U.S. Senators from New Jersey; four U.S. Representatives to Congress from New Jersey, two from New York, and one from Pennsylvania; the director of a New Jersey commercial fishing association; the Commission's Summer Flounder, Scup, and Black Sea Bass Management Board Chairman; the Council chairman; four conservation group representatives; the director and 56 individual members of a recreational fishing association; 12 members of a coastal New Jersey town chamber of commerce; a Rhode Island recreational angler association; the manager of a wholesale fish company; and six members of the public. Some parties submitted different comments on more than one occasion. Only comments that were applicable to the proposed 2007 specifications, including the analyses used to support these specifications, are addressed in this preamble. Significant issues and concerns raised by commenters are summarized below and responded to as follows.

Summer Flounder Comments

Total Allowable Landings for 2007

Comment 1: The majority of comments received urged NMFS to adopt the Council's preferred alternative TAL of 19.9 million lb (9,026 mt). Specifically, some commenters stated that the 19.9–million-lb (9,026–mt) TAL complies with the 50–percent probability of achieving the target F rate (F_{max}) in the FMP, some stated that the higher TAL meets the National Standards contained in the Magnuson-Stevens Act, continues rebuilding, and many stated that, by nature of being less restrictive than the 12.983–million-lb (5,889–mt) TAL implemented by this final rule, will have less of an impact on fishery participants and coastal communities than the TAL proposed by NMFS.

Response: The Council recommended TAL of 19.9 million lb (9,206 mt) is an amount that was projected in the most recent stock assessment update in June 2006 to have a 50–percent probability of not exceeding F_{max} (0.28). However, the peer-reviewed Summer Flounder Assessment and Biological Reference Point Update that has been used as the basis for the TAL NMFS is implementing through this rule indicates that fishing at the level proposed by the Council would not result in achieving the rebuilding biomass target until after 2022, 12 years after the end of the rebuilding period, even though the single year (2007) F target may not be exceeded. NMFS considers the results of the Reference Point update the best available scientific information (see responses to Comments 7,8, and 9).

Fishing at a TAL that has only a 50–percent probability that Fmax will not be exceeded in 2007 will not rebuild the fishery by the end of the rebuilding period. NMFS has the obligation under the Magnuson–Stevens Act to set annual quotas for summer flounder that rebuild the stock by January 1, 2010.

As such, NMFS is implementing a more conservative 12.983–million-lb (5,889–mt) TAL based on the best science available, as specified in the updated assessment. This TAL has a 75–percent probability of not exceeding the Frebuild (F=0.15) level in 2007. This is necessary to ensure that rebuilding of summer flounder occurs by January 1, 2010.

Impact on summer flounder fishery participants and coastal communities are addressed under Comment 10.

Comment 2: One group of commenters requested that NMFS implement a 14.156–million lb (6,421–mt) TAL in 2007.

Response: Under the updated assessment for 2006, a TAL of 14.156 million lb (6,421 mt) is associated with a 50–percent probability of not

exceeding the F target ($F_{rebuild}$=0.15) for 2007. The Peer Review Panel convened for re-examination of the biological reference points recommended that fishing at a TAL that has only a 50–percent probability that Fmax will not be exceeded in 2007 will not rebuild the fishery by the end of the rebuilding period. The updated assessment indicated that a 14.156–million-lb (6,421–mt) TAL in 2007 would fall short of the rebuild goal. In addition, the Peer Review Panel recommended that the retrospective pattern that has resulted in underestimated F's in past years be taken into account when setting the 2007 TAL. To do so, NMFS must set annual quotas for summer flounder that are based on much lower annual rates of removal than those of the past few years to rebuild the stock by January 1, 2010, as required by the Magnuson-Stevens Act. Therefore, NMFS is implementing a more conservative 12.983–million lb (5,889–mt) TAL that has a 75–percent probability of not exceeding the fishing mortality level ($F_{rebuild}$= 0.15) in 2007. Achieving this fishing mortality level in 2007 is necessary to provide for rebuilding of the summer flounder stock by January 1, 2010. See response to Comment 1 for details.

Comment 3: One commenter requested that NMFS implement a TAL in the range of 40.0 to 44.0 million lb (18,144 to 19,958 mt).

Response: NMFS cannot implement a TAL that has less than 50–percent probability of achieving the Fmax in 2007 and that would not rebuild the stock by 2010. A TAL in the range of 40.0 to 44.0 million lb (18,144 to 19,958 mt) does not meet the required probability of attaining the F_{max}, would not rebuild the stock by 2010, and, therefore, cannot be implemented by NMFS.

Rebuilding

Comment 4: Many commenters questioned the need to rebuild fully the summer flounder stock within a 10-year period ending January 1, 2010. Specific commenters urged NMFS to utilize administrative discretion or to exercise flexibility and to extend the rebuilding period by 2 or 3 years to avoid disproportionate economic impacts resulting from the reduced summer flounder TAL. Other commenters stated that the 10-year rebuilding period has no scientific or rational basis and should not be imposed on the summer flounder fishery.

Response: The Magnuson-Stevens Act stipulates that an FMP must, for any fishery that is overfished, rebuild the fishery in as short a time as possible, not to exceed 10 years, except in three narrowly defined circumstances (where (1) the biology of the stock, (2) other environmental conditions, or (3) management measures under an international agreement in which the United States participates dictate otherwise.) Based on the results of all recent stock assessments and peer reviews, there is no information to suggest that either the biology of the stock or prevailing environmental conditions would prevent the summer flounder stock from rebuilding within the required timeframe; also, there are no international agreements to which the United States is a participant that are related to the management of summer flounder. Therefore, none of the exceptions to the 10–year rebuilding timeframe provided in the Magnuson–Stevens Act are applicable to current conditions for the summer flounder stock, and NMFS is not authorized to extend the rebuliding period beyond the 10–year statutory limitation. The response to Comment 10 addresses the socioeconomic impacts of the summer flounder TAL implemented by this rule.

Comment 5: The conservation organization representatives also expressed concern that rigid adherence to the 10-year rebuilding period mandated by the Magnuson-Stevens Act may have negative impacts on the reauthorization of the Magnuson-Stevens Act.

Response: NMFS continues to support a strong Magnuson-Stevens Act and looks forward to working with the Congress and constituents during the reauthorization process. However, NMFS is bound to comply with the existing provisions of the Magnuson-Stevens Act.

Comment 6: The majority of comments received on summer flounder stated that the stock has responded favorably to rebuilding efforts and that the recent plateau in stock size is a function of the stock having reached the maximum level attainable under current environmental and ecological conditions. Many of these commenters stated that they believe the stock to be rebuilt at its current level or that it can never attain the target rebuilding level, particularly within the required 10-year period.

Response: Peer-reviewed information utilized for setting the 2007 TAL indicates that the summer flounder stock is rebuilding but is not yet rebuilt. The current stock levels are only slightly above the current biomass threshold ($\frac{1}{2}B_{msy}$) which is half of the rebuilt level. None of the peer-reviewed science indicates that the rebuilding target cannot be attained within the 10-year rebuilding period or that the biomass target is incorrect.

Use of Best Available Science

Comment 7: Several commenters stated that NMFS is not using the best scientific information in setting the 2007 summer flounder TAL, including the modeling approach used.

Response: The information used to set the summer flounder TAL is the best scientific information available, consistent with National Standard 2 of the Magnuson-Stevens Act. The information used in TAL setting, including the model and methods applied to it, have undergone substantial peer review in recent years. While recommendations have been made to develop additional modeling approaches, peer reviews have confirmed the current model and modeling approaches to be statistically valid for the annual stock assessment updates that provide the foundation for establishing the TAL.

Comment 8: The conservation organization representatives requested that an outside, independent review of the summer flounder stock assessment occur before the 2008 TAL is set. They also requested that this review include an examination of alternative model structures, the management implications of retrospective patterns, and an assessment of ecosystem impacts that may be affecting summer flounder.

Response: The summer flounder stock assessment has been independently reviewed by scientists from outside NMFS twice in the rebuilding period: In 2002 as part of Stock Assessment Review Committee (SARC) 35 and again in 2005 during SARC 41. The NMFS Office of Science and Technology convened an additional review of the biological reference points for the summer flounder stock to ensure that the 2007 quota for the fishery is based on the best possible scientific information available. The review panelists selected were scientists with recognized stock assessment expertise who have not specifically been involved in past summer flounder assessments: Two from the NMFS Northwest Region and one from Louisiana State University. The peer review panel recommended several adjustments in the assessment, and these were incorporated into the analysis that stemmed from the peer review.

NMFS is seeking to mitigate the retrospective patterns regarding fishing mortality by implementing a more conservative TAL for 2007, to ensure that the necessary F's are actually achieved.

The next full summer flounder stock assessment is scheduled for June 2008. The subcommittee meeting in which the assessment is conducted is an open meeting, and NMFS encourages the commenters to participate and present relevant data and analyses at the meeting.

Comment 9: Several commenters stated that the TALs authorized by NMFS for the first 7 years of the rebuilding period were set at incorrect levels. These commenters stated that TALs had been set too high, were overly optimistic, were routinely exceeded (i.e., as indicated by the retrospective analysis of F) and did not adequately compensate year to year to ensure timely rebuilding of the summer flounder stock.

Response: For each year during the rebuilding period, NMFS set the summer flounder TAL based on the best scientific information available, consistent with National Standard 2 of the Magnuson-Stevens Act. The information for setting the annual TAL is provided through the stock assessment update. In some years, additional levels of review are conducted. In 2002 and 2005, this included an external peer review of the stock assessment vetted through independent stock assessment scientists provided by the Center for Independent Experts (CIE) and reported on through the Center's Stock Assessment Workshop (SAW) and SARC process (35th and 41st, SARCs, respectively). For 2007, the annual stock assessment is accompanied by a peer reviewed Summer Flounder Assessment and Biological Reference Point Update.

The regulations state that the Council shall recommend, and NMFS shall implement, measures (including the TAL) necessary to ensure, with at least a 50–percent probability of success, that the applicable specified F will not be exceeded. This requirement is also consistent with a 2000 Federal Court Order (*Natural Resources Defense Council* v. *Daley*, Civil No. 1:99 CV 00221 (JLG)) regarding the setting of the summer flounder TAL. Through the course of the rebuilding period, NMFS has set TALs estimated to have at least a 50–percent probability of not exceeding F_{max}. NMFS is also required to ensure, under the Magnuson-Stevens Act, that the summer flounder stock is rebuilt within 10 years.

In the first 4 years of the rebuilding period, 2000–2004, the summer flounder stock was rebuilding at a rate that appeared likely to achieve the rebuilding target by 2009. During 2004, the Council provided, at NMFS's request, a rebuilding trajectory so that TALs could be recommended that would ensure that rebuilding continued, as needed, to the eventual target by 2009. These projections indicated that setting TALs with an F_{max} at the 75–percent probability level, rather than the 50–percent probability level, would rebuild the stock within the 10-year time frame. Based on this information, the Council recommended, and NMFS implemented, TALs of 30.3 million lb (13,744 mt) for 2005 and 33.0 million lb (14,969 mt) for 2006, consistent with the precautionary 75–percent probability of achieving the F target (F_{max}).

In 2005, new information on the retrospective pattern that underestimated previous years' F and revised reference points associated with a new stock assessment indicated that the 33.0–million-lb (13,744–mt) TAL set for 2006 during 2004 would need to be lowered to 23.59 million lb (10,700 mt) to achieve even a 50–percent probability of achieving the F target. The Council recommended a constant harvest TAL of 26.0 million lb (11,794 mt) for 2006–2008 that would average a 50–percent probability of achieving the target F for the 3-year period but that would not achieve the necessary target in 2006. NMFS implemented the 23.59–million-lb (10,700–mt) TAL to ensure that the mortality objective met the regulatory requirement of at least a 50–percent probability of attaining the F target in 2006. Doing so was controversial and many of the above listed commenters also responded to the 2006 specification proposed rule, asking NMFS not to implement the more conservative TAL of 23.59 million lb (10,700 mt).

Annual stock assessment updates to information used in previous year's TAL setting continue to illustrate that fishing mortality has been underestimated in previous years, while stock size and recruitment has been overestimated. Now, in light of the best science available and considering the retrospective patterns of F, stock size, and recruitment, it is clear that fishing at a TAL that has only a 50–percent probability that F_{max} will not be exceeded in 2007 will not rebuild the fishery by the end of the rebuilding period. Therefore, NMFS is implementing a more conservative 12.983–million lb (5,889–mt) TAL that has a 75–percent probability of not exceeding the fishing mortality level ($F_{rebuild}$= 0.15) in 2007. Achieving this fishing mortality level in 2007 is necessary to provide for rebuilding of the summer flounder stock by January 1, 2010.

Negative Socio-economic Impacts of a Reduced TAL

Comment 10: The majority of those commenting on summer flounder spoke about negative impacts associated with the reduction in TAL for 2007. Comments suggested that the 45–percent reduction in TAL from 2006 to 2007 would have severe economic impacts to charter, for hire, head boat, and commercial fishing vessels, and would have substantial impacts to fishing-related support industries ranging from bait shops to ocean-front hotels. Some commenters stated that the magnitude of the negative impacts would be higher than outlined in the EA/RIR/IRFA.

Response: Impacts of the 12.983–million lb (5,889–mt) TAL have been fully analyzed in the EA/RIR/IRFA published in the proposed rule (71 FR 62972, October 27, 2006). These analyses are based on the best information available and the details of the EA/RIR/IRFA are not repeated here in their entirety.

NMFS recognizes that substantial socioeconomic impacts are associated with the implementation of the 2007 TAL. NMFS has statutory and regulatory obligations to set annual harvest levels that, based on the best information available, will have at least a 50–percent probability of not exceed the annual fishing mortality level target and that will ensure that the summer flounder stock will be rebuilt within the specified time frame. As previously stated in the response to Comment 1, NMFS has selected a conservative TAL that has a 75–percent probability of attaining the level needed ($F_{rebuild}$) in 2007 to ensure rebuilding by January 1, 2010, in order to comply with the mandates of the Magnuson-Stevens Act. Although this final rule will not directly affect support industries as these entities do not hold Federal permits and are, therefore, not directly regulated, potential reductions in fishing effort and associated expenditures may have indirect impacts on hotels, restaurants, gear and bait shops, and other associated businesses. Sufficient data are not available to enumerate or characterize the impacts on these businesses.

Scup Comments

Comment 11: Two commenters wrote in support of the Council and Board recommended TAL of 16.0 million lb (7,257 mt) for 2007. One of these commenters stated that the 16.0–million lb (7,257–mt) TAL is sufficiently risk-averse and a substantial reduction from the 31.12–million lb (14,116–mt) TAL that was calculated to achieve the

targeted exploitation rate of 21 percent in 2007.

Response: Scup is considered overfished and the Council is currently developing Amendment 14 to the FMP to implement a scup rebuilding plan. Spring survey indices values have fallen below the biomass threshold, which is utilized for long-term potential catch projections. NMFS is implementing a risk-averse 12.0–million lb (5,443–mt) TAL for 2007, given the current overfished status for scup, poor 2004 and 2005 year classes, and continued uncertainty associated with the survey indices. The NMFS implemented TAL value falls within the range of yields expected at about ½ B_{msy} (11–16.5 million lb (4,990–7,484 mt)) based on the long-term potential catch, and would constrain harvest to the level of actual landings in 2005. The Scup Monitoring Committee and Council staff agreed with this approach.

Comment 12: One commenter stated that reduced values from the spring survey were not a compelling reason to implement a decreased TAL for 2007.

Response: NMFS utilized several factors in the decision to implement a more risk-averse TAL for 2007, including, but not limited to, the reduced spring survey indices values. Scup is currently overfished and the Council is developing a formal rebuilding plan to be implemented through Amendment 14 to the FMP. The response to Comment 11 outlines the information used as NMFS's justification for implementing a more risk-averse TAL for 2007.

Comment 13: One commenter stated that a more precautionary approach should be utilized in setting the 2007 scup TAL. This commenter also stated that scup management requires a significant overhaul and a rebuilding plan is long overdue.

Response: NMFS is implementing a TAL that is at the lower end of the range of yields expected at about ½B_{msy} (11–16.5 million lb (4,990–7,484 mt)). A further reduction does not appear to be warranted at this time. The Council is currently developing Amendment 14 to the FMP to address scup rebuilding.

Comment 14: One commenter stated that the reduced quota will result in the loss of recently re-established markets for scup, particularly the fresh fish market.

Response: NMFS is required to implement a TAL for 2007 that will contribute to the rebuilding of the scup stock. NMFS has selected a 12.0–million lb (5,443–mt) TAL for the reasons outlined in the response to Comment 11 (above) to meet that end. The 2007 TAL is consistent with the level of landings that occurred in 2005 and NMFS considers it unlikely to result in a loss of established markets for scup.

Black Sea Bass Comments

Comment 15: Three commenters relayed general opposition to the 2007 black sea bass TAL being implemented by NMFS, stating that disruption of black sea bass supply will result in market niches being filled by other fish and/or imports and ultimately lost.

Response: NMFS is implementing a 2007 black sea bass TAL that is a 37.5–percent decrease from 2006. NMFS is implementing a more risk-averse TAL for 2007 in light of the most recent biomass indices, the uncertainty in the stock status determination criteria, and to ensure continued rebuilding to the end of the rebuilding period that ends in 2009. The 2007 TAL is consistent with the level of landings that occurred in 2005 and NMFS considers it unlikely to result in a loss of established markets for black sea bass.

NMFS recognizes that socio-economic impacts may be associated with the implementation of the 2007 black sea bass TAL. These impacts may include industries that are involved with with the supply, purchase, distribution, and sale of black sea bass for consumption. NMFS has regulatory and statutory obligations to set annual harvest levels that, based on the best scientific information available, will not exceed recommended fishing mortality levels and that will ensure that the black sea bass stock will be rebuilt within the specified time frame, thus providing for long-term sustainable yields. The 2007 TAL meets the fishing mortality objectives and has a high probability of ensuring continued rebuilding.

Comment 16: One commenter stated that trawl surveys are an unreliable method for surveying black sea bass.

Response: The 43rd SAW, held in July 2006, included black sea bass. The Southern Demersal Working Group concluded that the data available, including trawl survey information, were adequate to perform a stock assessment for black sea bass. The SARC–43 panel utilized length data incorporating growth information, landings estimates, fishery length frequencies, and survey length frequencies to get preliminary estimates of biomass and fishing mortality rates. The SARC–43 panel did not endorse using the existing biomass reference point (the 3-year average weight per tow of black sea bass (>22 cm) in the Center spring trawl) as a basis for management. NMFS has encouraged the Council to develop replacement stock status determination criteria that are scientifically supportable and that can be relied on to measure stock rebuilding. The Council may consider additional data sources beyond trawl data when developing the criteria.

Comment 17: One commenter stated that the black sea bass rebuilding period should be liberalized to a 20-year time frame.

Response: The required time frame for stock rebuilding under the Magnuson-Stevens Act is outlined in response to Comment 4, and is not repeated here.

Research Set-Aside Comments

Comment 18: Two comments were received regarding the 2007 RSA program. One supported up to 3 percent for the 2007 TALs being set aside for research; one opposed the RSA program in its entirety.

Response: NMFS continues to support the RSA program as a useful means of acquiring information necessary to assess and manage the fisheries.

Classification

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 of the final EA/RIR/IRFA by the Council and on the submission of a supplemental economic analysis by the Northeast Fisheries Science Center (Center), both of which occurred in October 2006, in order for the agency to provide the public with information from the environmental and economic analyses as required in rulemaking. NMFS published the proposed rule on October 27, 2006, with a 21-day comment period, in order to allow for finalization of the proposed specifications by January 1, 2007. NMFS was unable to obtain the necessary data from the Council and Center before October 2006, to finalize the specifications. Publication of the adjusted summer flounder quota at the start of the fishing year is required by the order of Judge Robert Doumar in *North Carolina Fisheries Association* v. *Daley*.

If implementation of the specifications is delayed until beyond January 1, 2007, NMFS will be prevented from carrying out its legal obligation to prevent overfishing of these three species. If a 30-day delay in effectiveness were to be required, the lack of effective quota specifications would prevent NMFS from closing the

fishery should landings exceed the quotas. The summer flounder, scup, and black sea bass fisheries are all expected to be active at the start of the fishing season in 2007. In addition, the Delaware summer flounder fishery would be open for fishing but in a negative quota situation. All of these factors would result in large overages that would have distributional effects on other quota periods and could disadvantage some gear sectors.

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

Included in this final rule is the FRFA prepared pursuant to 5 U.S.C. 604(a). The FRFA incorporates the IRFA, a summary of the significant issues raised by the public comments in response to the IRFA, NMFS's responses to those comments, and a summary of the analyses completed to support the action. 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 these specifications 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

Several of the comment letters received on the proposed specifications specifically opposed the reductions to the TALs for summer flounder, scup, and black sea bass. Many of the comments addressed the potential economic impact of reduction of the summer flounder TAL on the recreational fishing industry, particularly in New York and New Jersey. Although consideration of the reduced TALs was given, no changes were made in the final rule as a result of these 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 2007 quotas could affect 2,242 vessels that held a Federal summer flounder, scup, and/or black sea bass permit in 2005. However, the more immediate impact of this final rule will likely be felt by the 906 vessels that actively participated (i.e., landed these species) in these fisheries in 2005.

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

Specification of commercial quotas and possession limits is constrained by the conservation objectives set forth in the FMP and implemented at 50 CFR part 648 under the authority of the Magnuson-Stevens Act. Economic impacts of reduced quota specifications, that reduce the number of fish that may be taken by participants of both commercial and recreational fisheries, may be offset by adjustments to such things as commercial fish sizes, changes to mesh size, gear restrictions, or possession and trip limits that may increase efficiency or value of the fishery. This action contains no adjustments to such measures. Therefore, the economic impact analysis of the action is evaluated solely on the different levels of quota specified in the alternatives. The ability of NMFS to minimize economic impacts for this action is constrained to approving quota levels that provide for the maximum availability of fish while still meeting the required objectives of the FMP, its implementing regulations, and the Magnuson-Stevens Act.

The economic analysis for the 2007 specifications assessed the impacts of five of the six management alternatives. Council staff provided analysis for Alternatives 1, 2, and 3, while the Center provided analysis for Alternatives 5 and 6. The no action alternative, designated as Alternative 4, was excluded from analysis because it is not consistent with the goals and objectives of the FMP and the Magnuson-Stevens Act. Implementation of the no action alternative would substantially complicate the approved management program for these fisheries, and would very likely result in overfishing of the resources.

Alternatives 1 (Council preferred), 3 (status quo), and 5 (NMFS analyzed) all have an economic impact that is less than or equal to the alternative implemented by this rule, depending on the specific species examined. These three alternatives were evaluated by NMFS as outlined below:

Alternative 3 (status quo) would provide for the maximum amount of landings within the range of alternatives and would produce the smallest impact on small entities. However, Alternative 3 would likely result in the biological targets (i.e., fishing mortality and exploitation rates) specified in the FMP being exceeded. Alternative 3 is inconsistent with the goals and objectives of the FMP and the Magnuson-Stevens Act.

Alternative 1 (Council preferred), the second least restrictive alternative with the second smallest impact to small entities, would also provide for landing levels that could not be implemented. Alternative 1 is not sufficiently risk-averse for summer flounder, and fishing mortality would likely exceed the biological targets specified in the FMP, resulting in continued overfishing. In addition, Alternative 1 did not adequately address concerns raised by Council staff and the Monitoring Committee regarding the scup and black sea bass biological targets and status of these stocks.

Alternative 5 (NMFS analyzed) is more restrictive for summer flounder than Alternatives 1 or 3, but is equal to the most restrictive alternatives for scup and black sea bass. The measures contained in Alternative 5 were not selected because they were not sufficiently risk-averse for the required rebuilding of the summer flounder stock.

Alternative 2 is the most restrictive alternative for summer flounder and equal to the most restrictive alternatives for scup and black sea bass. Accordingly, Alternative 2 is associated with the highest economic impact to small entities, particularly for summer flounder. This alternative would meet all the objectives of the FMP and satisfy the requirements of the Magnuson-Stevens Act for all three species. This alternative was not selected because the measures contained therein were overly restrictive for summer flounder in light of the best scientific information available. Three alternatives, including the alternative implemented by this action, provide the same quota level for scup and black sea bass as Alternative 2.

This final rule implements Alternative 6, which consists of the second most restrictive quota of those

considered for summer flounder and is equal to the most restrictive quota alternatives considered for scup and black sea bass. As such, the economic impacts of the alternative are the second highest for summer flounder and equal to the highest impacts for scup and black sea bass. Relative to 2006, the 2007 commercial quotas and recreational harvest limits contained in this action would result in the following TAL decreases for the commercial and recreational sectors:

- 45 percent for summer flounder
- 26 percent for scup
- 38 percent for black sea bass

This alternative was selected because it is based on the best science available and is consistent with the goals, objectives, and requirements of the FMP, its implementing regulations, and the Magnuson-Stevens Act. It contains the highest landing limits that achieve the highest probability of attaining the fishing mortality and exploitation targets for the summer flounder fishery for 2007 among the alternatives considered. Alternative 6 follows the recommendation of the Monitoring Committee and Council staff for a risk-averse quota in the scup fishery and was selected because of the current overfished status of the fishery, uncertainty associated with the current survey indices, and poor 2004 and 2005 year classes. The black sea bass quota in Alternative 6 was also recommended by the Monitoring Committee and Council staff. The black sea bass quota in Alternative 6 was selected as a risk-averse measure that will constrain harvest within the 2005 and 2006 levels until such time that stock determination criteria that are scientifically supportable can be developed.

Table 5 presents the 2007 initial TALs, RSA, commercial quotas adjusted for RSA, and preliminary recreational harvests for the fisheries under the five analyzed quota alternatives.

TABLE 5. COMPARISON OF THE ALTERNATIVES OF QUOTA COMBINATIONS REVIEWED

	Initial TAL		RSA		2006 Commercial Quota Overage		Preliminary Adjusted Commercial Quota		Preliminary Recreational Harvest Limit	
	million lb	mt	lb	mt	lb	mt	million lb	mt	million lb	mt
Quota Alternative 1 (Council's Preferred)										
Summer Flounder	19.9	9,026	567,092	257	253,082	115	11.45	5,193	7.63	3,462
Scup	16	7,257	480	218	0	0	11.93	5,411	3.59	1,628
Black Sea Bass	6.5	2,948	132,000	60	0	0	3.12	1,415	3.25	1,474
Quota Alternative 2 (Most Restrictive)										
Summer Flounder	5.22	2,368	156,600	71	253,082	115	2.89	1,309	19.24	873
Scup	12	5,442	360,000	163	0	0	8.90	4,037	2.74	1,243
Black Sea Bass	5	2,268	132,000	60	0	0	2.39	1,084	2.48	1,125
Quota Alternative 3 (Status-Quo-Least Restrictive)										
Summer Flounder	23.59	10,700	567,062	257	253,082	115	13.66	6,197	9.11	4,131
Scup	16.27	7,380	488,100	221	0	0	12.13	5,502	3.65	1,656
Black Sea Bass	8	3.629	132,000	60	0	0	3.86	1,751	4.01	1,819
Quota Alternative 4 (No Action- described but not analyzed)										
Quota Alternative 5 (NMFS Analysis)										
Summer Flounder	14.156	6,421	424,680	193	253,082	115	8.09	3,668	5.39	2,445
Scup	12	5,443	360,000	163	0	0	8.90	4,037	2.74	1,243
Black Sea Bass	5	2,268	150,000	68	0	0	2.38	1,078	2.47	1,122
Quota Alternative 6 (NMFS Analysis-Implemented by this Final Rule)										
Summer Flounder	12.983	5,889	389,490	177	253,082	115	7.40	3,359	4.94	2,239
Scup	12	5,443	360,000	163	0	0	8.90	4,037	2.74	1,243

TABLE 5. COMPARISON OF THE ALTERNATIVES OF QUOTA COMBINATIONS REVIEWED—Continued

	Initial TAL		RSA		2006 Commercial Quota Overage		Preliminary Adjusted Commercial Quota		Preliminary Recreational Harvest Limit	
	million lb	mt	lb	mt	lb	mt	million lb	mt	million lb	mt
Black Sea Bass	5	2,268	150,000	68	0	0	2.38	1,084	2.47	1,122

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

Small Entity Compliance Guide

Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996 states that, for each rule or group of related rules for which an agency is required to prepare a FRFA, the agency shall publish one or more guides to assist small entities in complying with the rule, and shall designate such publications as ''small entity compliance guides.'' The agency shall explain the actions a small entity is required to take to comply with a rule or group of rules. As part of this rulemaking process, a small entity compliance guide will be sent to all holders of Federal permits issued for the summer flounder, scup, and black sea bass fisheries. In addition, copies of this final rule and guide (i.e., permit holder letter) are available from NMFS (see **ADDRESSES**) and at the following website: *http://www.nero.noaa.gov/nero/nr/index.html*.

Dated: December 8, 2006.

Samuel D. Rauch III,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

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