

**DEPARTMENT OF COMMERCE****National Oceanic and Atmospheric Administration****50 CFR Part 648**

[Docket No. 0908191244–91369–01]

RIN 0648–XR08

**Fisheries of the Northeastern United States; Summer Flounder, Scup, and Black Sea Bass Fisheries; 2010 Summer Flounder, Scup, and Black Sea Bass Specifications; 2010 Research Set-Aside Projects**

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

**ACTION:** Proposed specifications; request for comments.

**SUMMARY:** NMFS proposes specifications for the 2010 summer flounder, scup, and black sea bass fisheries and provides notice of three projects that may be requesting Exempted Fishing Permits (EFPs) as part of the Mid-Atlantic Fishery Management Council's (Council) Research Set-Aside (RSA) program. 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 these species and to provide an opportunity for public comment. Furthermore, regulations under the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) require a notice to be published to provide interested parties the opportunity to comment on applications for EFPs. The intent of this action is as follows: To establish 2010 harvest levels that assure that the target fishing mortality rates (F) specified for these species in the most recent stock assessment updates are not exceeded; to allow for summer flounder stock rebuilding; and to provide notice of EFP requests, all in accordance with the Magnuson-Stevens Act.

**DATES:** Comments must be received on or before November 19, 2009.

**ADDRESSES:** You may submit comments, identified by RIN 0648–XR08, by any one of the following methods:

- *Electronic Submissions:* Submit all electronic public comments via the Federal eRulemaking Portal <http://www.regulations.gov>.
- *Fax:* (978) 281–9135.
- *Mail and hand delivery:* Patricia A. Kurkul, Regional Administrator, NMFS, Northeast Regional Office, 55 Great Republic Drive, Gloucester, MA 01930.

Mark the outside of the envelope: “Comments on 2010 Summer Flounder, Scup, and Black Sea Bass Specifications.”

*Instructions:* No comments will be posted for public viewing until after the comment period has closed. All comments received are a part of the public record and will generally be posted to <http://www.regulations.gov> without change. All Personal Identifying Information (for example, name, address, etc.) voluntarily submitted by the commenter may be publicly accessible. Do not submit Confidential Business Information or otherwise sensitive or protected information.

NMFS will accept anonymous comments (enter N/A in the required fields, if you wish to remain anonymous). You may submit attachments to electronic comments in Microsoft Word, Excel, WordPerfect, or Adobe PDF file formats only.

Copies of the specifications document, including the Environmental Assessment and Initial Regulatory Flexibility Analysis (EA/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 New Street, Dover, DE 19901–6790. These documents are also accessible via the Internet at <http://www.nero.noaa.gov>.

**FOR FURTHER INFORMATION CONTACT:** Michael Ruccio, Fishery Policy Analyst, (978) 281–9104.

**SUPPLEMENTARY INFORMATION:****Background**

The summer flounder, scup, and black sea bass fisheries are managed cooperatively by the Council and the Atlantic States Marine Fisheries Commission (Commission), 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 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, North Carolina) 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 summer flounder, scup, and black sea bass regulations outline the process for specifying the annual commercial quotas and recreational harvest limits for the summer flounder, scup, and black sea bass fisheries, as well as other management measures (e.g., mesh requirements, minimum commercial fish sizes, gear restrictions, possession restrictions, and area restrictions) for these fisheries. The measures are intended to achieve (i.e., not exceed) the annual F targets set forth for each species in annual stock assessment updates required under the FMP. Once the catch limits are established, they are divided into quotas and catch limits based on formulas contained within the FMP.

The Magnuson-Stevens Fishery Conservation and Management Reauthorization Act of 2006 (MSRA), added new requirements to involve the Council's Scientific and Statistical Committee (SSC) in the specification-setting process. Specifically, section 302(g)(1)(B) of the reauthorized Magnuson-Stevens Act states that an SSC for each Regional Fishery Management Council “shall provide its Council ongoing scientific advice for fishery management decisions, including recommendations for acceptable biological catch, preventing overfishing, maximum sustainable yield, and achieving rebuilding targets, and reports on stock status and health, bycatch, habitat status, social and economic impacts of management measures, and sustainability of fishing practices.” The Acceptable Biological Catch (ABC) is a level of a stock catch that accounts for the scientific uncertainty in the estimate of that stock's defined overfishing level. This requirement implemented by the Magnuson-Stevens Act was put into practice by the Council for the first time in the 2009 specification setting process. The SSC met on July 16, 2009, to recommend ABCs for the 2010 summer flounder, scup, and black sea bass specifications.

The FMP's implementing regulations also require that a Monitoring Committee for each species review the best available scientific information and recommend catch limits and other management measures that will mitigate management uncertainty and/or implementation imprecision to ensure the target F for each fishery is not exceeded. The Monitoring Committees met on July 17, 2009.

The Council and the Commission's Summer Flounder, Scup, and Black Sea Bass Management Board (Board) consider the SSC and 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 and applicable law. The Council and Board made their recommendations at a joint meeting held August 4–6, 2009.

#### Explanation of RSA

*Background:* In 2001, regulations were implemented under Framework Adjustment 1 to the FMP to allow up to 3 percent of the Total Allowable Landings (TAL) for each species to be set aside each year for scientific research purposes. For the 2010 fishing year, a Request for Proposals was published to solicit research proposals based upon the research priorities that were identified by the Council (74 FR 72, January 2, 2009).

NMFS intends to conditionally approve three research projects for the harvest of the portion of the quota that has been recommended by the Council and the Atlantic States Marine Fisheries Commission (Commission) Summer Flounder, Scup, and Black Sea Bass Fisheries Management Board (Board) to be set aside for research purposes. In anticipation of receiving applications for exempted fishing permits (EFPs) to conduct this research and harvest set-aside quota, 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 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.

For informational purposes, these proposed specifications include a statement indicating the amount of quota that has been preliminarily set aside for research purposes (a percentage of the TAL for each fishery, not to exceed 3 percent, as recommended by the Council and Board), and a brief description of the RSA projects, including exemptions requested, and the amount of RSA requested for each project. The RSA amounts may be adjusted, following consultation with RSA applicants, in the final rule establishing the 2010 specifications for the summer flounder, scup, and black sea bass fisheries. If the total amount of RSA is not awarded, NMFS will publish a document in the **Federal Register** to restore the unused amount to the applicable TAL.

For 2010, the conditionally approved projects may collectively be awarded

the following amounts of RSA: 663,900 lb (301 mt) of summer flounder; 405,500 lb (184 mt) of scup; and 69,000 lb (31 mt) of black sea bass. The projects may also be collectively awarded up to 1.3 million lb (590 mt) of *Loligo* squid, 879,000 (399 mt) of Atlantic bluefish, and 33,069 lb (15 mt) of butterfish.

*2010 RSA Proposal Summaries:* Project number 1 would conduct a fishery-independent scup and black sea bass survey that would utilize unvented fish pots fished on hard bottom areas in southern New England waters to characterize the size composition of the scup and black sea bass populations. Survey activities would be conducted June 15–October 15, 2010, at 15 rocky bottom study sites. Up to two vessels would conduct the research survey. Sampling would occur off the coasts of Rhode Island, southern Massachusetts, with the furthest west site off of Block Island near Southwest Shoals. Up to four vessels would harvest the RSA during the period January 1–December 31, 2010. The principal investigators have requested exemptions from trip limits, gear requirements (excluding marine mammal avoidance and/or release devices), and closed seasons for harvest of RSA species. Also, if undersized fish are retained or handled for scientific purposes prior to discarding during a commercial trip, an exemption from size limits would be required.

Project number 2 would conduct a near-shore trawl survey in Mid-Atlantic waters between Aquinnah, Massachusetts, and Cape Hatteras, North Carolina, including both Block Island and Rhode Island Sounds. Two survey cruises would occur each year (spring and fall) with stratified random sampling of approximately 150 stations in depths between 18–120 feet (8–37 m). The function of the survey would be to provide stock assessment data for summer flounder, scup, black sea bass, *Loligo* squid, butterfish, Atlantic bluefish, several species managed by the Commission such as weakfish and Atlantic croaker, and unmanaged forage species. The research aspects of the trawl survey would be conducted by one scientific research vessel. This vessel could operate under a Letter of Acknowledgment (LOA) as provided for by the specific exemption for scientific research activities found at 50 CFR 600.745. Up to 50 vessels would harvest the RSA January 1–December 31, 2010, during commercial fishing operations, except that these vessels have requested exemptions for closed seasons and trip limits to harvest the RSA allocated to the project.

Project number 3 would evaluate a method to reduce butterfish retention in the offshore directed *Loligo* squid fishery through the use of two bycatch reduction devices (BRD) adapted to pre-existing gear, and video cameras would further be used to identify squid/butterfish behavior in the net and to fine-tune the BRDs. A single research vessel would be used to conduct paired replicate tows comparing a control “Superior” trawl to a BRD-altered “Superior” trawl (experimental trawl). Sampling would occur November to December 2010 and January to March 2011 within the Hudson Canyon region. The research vessel could operate under an LOA as provided for by the specific exemption for scientific research activities found at 50 CFR 600.745, or, if fish are retained or handled for scientific purposes during a commercial trip, the vessel would operate under an EFP found under 50 CFR 600.745 and 50 CFR 648.12. Up to 50 vessels would harvest the RSA January 1–December 31, 2010, during commercial fishing operations, except that these vessels have requested exemptions for closed seasons and trip limits to harvest the RSA allocated to the project.

#### Explanation of Quota Adjustments Due to Quota Overages

This action 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 specifications stage (*i.e.*, in the final rule), 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 specifications are published. The commercial quotas contained in these proposed specifications for summer flounder, scup, and black sea bass are not adjusted for any overages that have occurred. The final specifications will contain quotas that have been fully adjusted consistent with the procedures described above.

### Summer Flounder

The timeline for completion of the summer flounder rebuilding program was extended from January 1, 2010, to no later than January 1, 2013, by section 120(a) of the reauthorized Magnuson-Stevens Act.

In June 2009, the Southern Demersal Working Group (SDWG), a technical stock assessment group composed of personnel from the Northeast Fisheries Science Center (NEFSC), NMFS Northeast Regional Office, Council, Commission, state marine fisheries agencies, academia, and independently-hired scientists, conducted a stock assessment update using the 2008 peer-review accepted benchmark stock assessment methods.

The 2009 SDWG assessment update shows that summer flounder were not overfished and that overfishing did not occur in 2008, the year for which the most recent, complete fishery-dependent data are available. The fishing mortality rate ( $F$ ) in 2008 was estimated to be 0.25, below both the overfishing threshold ( $F_{\text{MSY}} = F_{\text{THRESHOLD}} = F_{35 \text{ percent}} A^1 = 0.310$ ) and the management target ( $F_{\text{TARGET}} = F_{40 \text{ percent}} = 0.255$ ).  $F_{\text{MSY}}$  is the fishing mortality rate that, if applied constantly, would result in maximum sustainable yield (MSY) from the summer flounder stock. When  $F > F_{\text{THRESHOLD}}$ , overfishing is considered to be occurring. Fishing year 2008 is the second year of the rebuilding program in which overfishing did not occur on summer flounder. Spawning stock biomass (SSB) was estimated to be 101.5 million lbs (46,040 mt) in 2008, about 77 percent of the  $SSB_{35 \text{ percent}}$  ( $SSB_{\text{MSY}}$  target proxy reference point) = 132.4 million lbs (60,056 mt). The assessment update shows that the summer flounder stock has not been overfished since 2001. The average recruitment from 1982 to 2008 is 41.8 million fish. The 2008 year class is estimated to have been 57.9 million fish, the largest recruitment event for the stock since 1986.

The SSC, using the updated assessment information, recommended

to the Council that the 2010 ABC be set no higher than 25.48 million lb (11,558 mt). This results in a TAC established at the ABC level (i.e., 25.48 million lb, 11,558 mt). Estimated discards of 3.35 million lb (1,520 mt) are removed from the TAC to produce a 2010 TAL of 22.13 million lb (10,038 mt). This TAL is projected to have a 50-percent probability of achieving the  $F_{\text{TARGET}} = F_{40 \text{ percent}} = 0.255$  in 2010 and is projected to have a 94.6-percent probability of preventing overfishing on the stock (i.e., preventing an  $F$  higher than  $F_{\text{THRESHOLD}} = F_{35 \text{ percent}} = 0.310$ ). The Monitoring Committee concurred with the SSC's ABC recommendation and did not recommend any additional changes to the 2010 summer flounder management measures that may be modified through the specification process. The Monitoring Committee recommended that measures to improve the recreational fishery management precision may be necessary and, if needed, will be developed in November 2009, in advance of the December joint Council and Board meeting where 2010 summer flounder recreational management measures will be discussed.

The Council and Board considered the SSC and Monitoring Committee recommendations before concurring with ABC/TAC and TAL of 22.13 million lb (10,038 mt) that results after removal of estimated discards. Fishing under this TAC/TAL level in 2010 is expected to achieve the required stock rebuilding for summer flounder to exceed the  $B_{\text{MSY}}$  target by the January 1, 2013, deadline. The proposed TAL would be a 19.9-percent increase from the 2008 TAL of 18.45 million lb (8,369 mt). All other management measures were recommended to by the Council to remain *status quo*.

The regulations state that the Council shall recommend, and NMFS shall implement, measures (including the TAL) necessary to achieve, with at least a 50-percent probability of success, a fishing mortality rate that produces the maximum yield per recruit ( $F_{\text{MAX}}$ ). However, Framework Adjustment 7 to the FMP (Framework 7) was implemented October 1, 2007 (72 FR 55704), to ensure that the best available scientific information could be adopted without delay by the Council for use in managing summer flounder. As such,

the SDWG 2009 updated assessment recommended  $F_{\text{MSY}} = F_{35 \text{ percent}}$  as the best available fishing mortality rate estimate to produce the optimum yield per recruit and, as such, is now the threshold value for assessing whether overfishing is occurring on summer flounder, replacing  $F_{\text{MAX}}$ . A 2000 Federal Court Order (*Natural Resources Defense Council v. Daley*, Civil No. 1:99 CV 00221 (JLG)) also requires the annual summer flounder TAL to have at least a 50-percent probability of success. As previously stated, the Council and Board's recommended TAL of 22.13 million lb (10,038 mt) has a 94.6-percent probability of constraining fishing mortality below the overfishing threshold of  $F_{\text{MSY}} = F_{35 \text{ percent}}$  and a 50-percent probability of constraining fishing mortality below the assessment-recommended management target of  $F_{40 \text{ percent}}$ . NMFS is proposing to implement a TAL of 22.13 million lb (10,038 mt) for 2010, consistent with the Council's and Board's recommendation.

Based on the allocation scheme contained in the FMP, the TAL is divided 60 percent to the commercial fishery and 40 percent to the recreational fishery. This results in an initial commercial quota of 13.28 million lb (6,023 mt) and a recreational harvest limit of 8.85 million lb (4,015 mt); however, the FMP also specifies that up to 3 percent of the TAL may be set aside for research activities before the remaining TAL is allocated 60 percent to the commercial sector and 40 percent to the recreational sector. The Council and Board agreed to set aside up to 3 percent of the TAL or 663,900 lb (301 mt). After deducting the RSA, the TAL would be divided into a commercial quota of 12,879,660 lb (5,842 mt) and a recreational harvest limit of 8,586,440 lb (3,895 mt).

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 reductions if there are overages of states quotas carried over from a 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 the 2010 specifications.

<sup>1</sup> The fishing mortality rate which reduces the spawning stock biomass per recruit (SSB/R) to 35 percent of the amount present in the absence of fishing. More generally,  $F_x$  percent is the fishing mortality rate that reduces the SSB/R to  $x$  percent of the level that would exist in the absence of fishing.

TABLE 1—2010 PROPOSED INITIAL SUMMER FLOUNDER STATE COMMERCIAL QUOTAS

State	Percent share	Initial commercial quota		Commercial quota less RSA <sup>1</sup>	
		lb	kg <sup>2</sup>	lb	kg <sup>2</sup>
ME .....	0.04756	6,315	2,864	6,126	2,779
NH .....	0.00046	61	28	59	27
MA .....	6.82046	905,621	410,790	878,452	398,466
RI .....	15.68298	2,082,386	944,570	2,019,915	916,233
CT .....	2.25708	299,695	135,942	290,704	131,863
NY .....	7.64699	1,015,367	460,571	984,906	446,754
NJ .....	16.72499	2,220,744	1,007,330	2,154,122	977,110
DE .....	0.01779	2,362	1,071	2,291	1,039
MD .....	2.03910	270,752	122,813	262,629	119,129
VA .....	21.31676	2,830,439	1,283,887	2,745,526	1,245,371
NC .....	27.44584	3,644,259	1,653,036	3,534,931	1,603,445
Total <sup>3</sup> .....	100.00001	13,278,001	6,022,901	12,879,661	5,842,214

<sup>1</sup> Preliminary Research Set-Aside amount is 663,900 lb (301 mt).

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

<sup>3</sup> Rounding of quotas results in totals exceeding 100 percent.

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 these proposed specifications because these measures are not authorized by the FMP and NMFS does not have authority to implement them.

### Scup

Scup stock status and biological reference point calculation methods were evaluated and externally peer-reviewed in December 2008 by the Data Poor Stocks Working Group (DPSWG) at the NEFSC. The result of these evaluations moved the scup stock assessment into a forward-projection catch-at-age analytical assessment model and significantly modified both biological reference points and assessment of the stock's status. The full DPSWG scup reports and findings are available on the NEFSC Web site: <http://www.nefsc.noaa.gov/saw/>.

Based on the findings of the DPSWG, scup were formally declared rebuilt in April 2009 having achieved the revised rebuilding biomass target and, as such, are no longer subject to a formal Magnuson-Stevens Act rebuilding plan. Framework 7 permits the results of the

peer-reviewed DPSWG's 2008 stock status and biological reference point calculation to be utilized as the best available scientific information in the specifications process without additional modification of the FMP. As such, for the formulation of 2010 scup specifications, the SDWG updated scup stock status using the accepted DPSWG model and methods using 2008 data, the most recent complete set of fishery dependent and independent data. This is the first year of utilizing the DPSWG updated methods to provide stock status information for use in developing specifications. Using DPSWG methods, the SDWG 2009 assessment update indicated that  $F$  in 2008 was 0.048. This is below the DPSWG-established overfishing threshold of  $F_{MSY} = F_{THRESHOLD} = F_{40\text{ percent}} = 0.177$  and, thus, scup are not experiencing overfishing. Prior to the DPSWG, a reliable estimate of fishing mortality was not available, thus scup stock status relative to overfishing was previously unknown. Scup SSB was estimated to have been 414.5 million lb (118,014 mt) in 2008, substantially above both the DPSWG established overfished threshold ( $\frac{1}{2} B_{msy\text{ proxy}}$ ) of 101.5 million lb (46,040 mt) and 104 percent above the  $SSB_{40\text{ percent}}$  (as  $SSB_{MSY\text{ proxy}}$ ) level of 202.9 million lb (92,044 mt). Therefore, the stock was not overfished in 2008 and was well above the SSB rebuilding/MSY level established by the DPSWG. The average recruitment class value for scup from 1984 to 2008 is about 110 million fish. The estimated 2008 recruitment is above average at 192.4 million fish.

Based on the information provided by the SDWG, the SSC recommended a 10-percent increase in TAC from the 2009 level as the 2010 scup ABC. The SSC

expressed concern over the high degree of uncertainty associated with the new scup assessment. Their recommendation for a 10-percent increase follows the advice of the DPSWG peer-review panel recommendations for minor, incremental increases in scup catches rather than large-scale increases to the maximum permissible level calculated when using the  $F_{MSY}$  value of 0.177. Both the DPSWG peer-review panel and SSC noted numerous scientific uncertainties in the new assessment. The Monitoring Committee agreed with the SSC ABC recommendation and did not recommend any modification of the commercial fishery management measures. The Monitoring Committee will discuss recreational fishery management measures in November 2009.

A 10-percent increase in TAC (ABC equivalent) results in a combined discard and landings level of 17.09 million lb (7,752 mt) for 2010. After removing estimated discards of 2.98 million lb (1,352 mt), the resulting TAL consistent with the ABC recommendation is 14.11 million lb (6,400 mt). This is a 26.2-percent increase from the 2008 TAL of 11.18 million lb (4,170 mt). The increase in TAL is not the same as the percent increase in TAC from 2009 levels because the discard information used in calculating the TAL for the two years is different. NMFS is proposing to implement the Council and Board recommendation for an initial TAL of 14.11 million lb (6,400 mt) and an 17.09 million-lb (7,752 mt) TAC.

The FMP specifies that the established TAC be allocated 78 percent to the commercial sector and 22 percent to the recreational sector. The commercial TAC, discards, and TAL

(i.e., final commercial quota, after reduced for any research set-aside) 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 and recreational TACs would be 13,330,200 lb (6,046 mt) and 3,759,800 lb (1,705 mt), respectively. After deducting estimated discards (2.32 million lb (1,054 mt) for the commercial sector and 0.66 million lb (299 mt) for the recreational sector),

the initial commercial quota would be 11.0 million lb (4,992 mt) and the recreational harvest limit would be 3.10 million lb (1,406 mt). The Council and Board agreed to set aside the maximum 3 percent (423,300 lb (192 mt)) of the TAL for research activities. Deducting this RSA would result in a commercial quota of 10,675,626 lb (4,842 mt) and a recreational harvest limit of 3,011,074 million lb (1,366 mt).

The proposed 2010 specifications would maintain the status quo base scup possession limits, i.e., 30,000 lb (13,608 kg) for Winter I, to be reduced

to 1,000 lb (454 kg) when 80 percent of the quota is projected to be reached, and 2,000 lb (907 kg) for Winter II.

Table 2 presents the 2010 commercial allocation recommended by the Council, with and without the preliminary RSA deduction. These 2010 allocations are preliminary and may be subject to downward adjustment in the final rule implementing these specifications due to 2009 or other previously unaccounted for overages, based on the procedures for calculating overages described earlier.

TABLE 2—2010 PROPOSED INITIAL TAC, INITIAL COMMERCIAL SCUP QUOTA, AND POSSESSION LIMITS

Period	Percent	TAC in lb (mt)	Discards in lb (mt)	Initial Commercial quota in lb (mt)	Commercial quota less RSA in lb (mt)	Possession limits in lb (kg)
Winter I .....	45.11	6,013,253 (2,728)	1,048,537 (476)	4,964,716 (2,252)	4,815,775 (2,184)	<sup>1</sup> 30,000 (13,608)
Summer .....	38.95	5,192,113 (2,355)	905,354 (411)	4,286,759 (1,944)	4,158,156 (1,886)	n/a
Winter II .....	15.94	2,124,834 (964)	370,509 (168)	1,754,325 (796)	1,701,695 (772)	2,000 (907)
Total <sup>2</sup> .....	100.00	13,330,200 (6,046)	2,324,400 (1,054)	11,005,800 (4,992)	10,675,626 (4,842)	

<sup>1</sup> The Winter I landing limit would drop to 1,000 lb (454 kg) upon attainment of 80 percent of the seasonal allocation.

<sup>2</sup> Totals subject to rounding error.  
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. As shown in Table 3, the proposed specifications would maintain the status

quo Winter II possession limit-to-rollover amount ratios (i.e., 1,500 lb (0.68 mt) per 500,000 lb (227 mt) of unused Winter I period quota).

TABLE 3—POTENTIAL INCREASE IN WINTER II POSSESSION LIMITS BASED ON THE AMOUNT OF UNHARVESTED SCUP ROLLED OVER FROM WINTER I TO WINTER II PERIOD

Initial Winter II	Rollover from	Increase in initial Winter II possession limit	Final Winter II possession				
			lb	kg	mt	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 stock status and biological reference point calculation methods were also evaluated and externally peer-reviewed in December 2008 by the DPSWG. As was the case for scup, the black sea bass assessment was moved into a forward-projection analytical assessment model, with resultant changes to both biological reference points and assessment of the stock's status. The full DPSWG findings for black sea bass are available on the

NEFSC Web site: <http://www.nefsc.noaa.gov/saw/>.

Based on the findings of the DPSWG, black sea bass were also declared rebuilt in April 2009 and are no longer subject to a formal Magnuson-Stevens Act rebuilding plan. Framework 7 permits the results of the peer-reviewed DPSWG's 2008 stock status and biological reference point calculation to be utilized as the best available scientific information during the specification-setting process without

additional modification of the FMP. As was the case for scup, the formulation of 2010 black sea bass specifications are informed by an update to the DPSWG model and methods conducted by the SDWG. The SDWG used the most recent complete set of fisher dependent and independent data, updated through 2008. This is also the first year of utilizing the DPSWG updated methods to provide stock status information for use in developing black sea bass specifications.

Using the DPSWG methods, the SDWG 2009 assessment update indicated that F in 2008 was 0.28, below the DPSWG-established overfishing threshold of  $F_{MSY} = F_{THRESHOLD} = F_{40\text{ percent}} = 0.42$ . Thus, the stock was not overfished in 2008. Prior to the DPSWG, a reliable estimate of fishing mortality was not available and black sea bass stock status relative to overfishing was previously unknown. Black sea bass SSB was estimated to have been 28.4 million lb (12,882 mt) in 2008, above both the DPSWG established overfished threshold ( $\frac{1}{2} B_{MSY\text{ proxy}}$ ) of 13.8 million lb (6,260 mt) and 3 percent above the  $SSB_{40\text{ percent}}$  (as  $SSB_{MSY\text{ proxy}}$ ) level of 27.6 million lb (12,519 mt). Therefore, the stock was not overfished in 2008 and was above the SSB rebuilding/MSY level established by the DPSWG.

Based on the SDWG assessment update, the SSC recommended *status quo* for the ABC and 2010 black sea bass TAC. Similar to scup, the SSC expressed concern over the high degree of uncertainty associated with the new black sea bass stock assessment but also expressed concerns about limits of understanding the complex life history of black sea bass. Both the DPSWG peer-review panel and SSC noted numerous uncertainties in the new assessment. In light of these uncertainties, the SSC forwarded a recommendation for no change in catch and landings for 2010. The Monitoring Committee disagreed with the SSC ABC recommendation, stating it was too conservative, and recommended a higher ABC to the Council. The Monitoring Committee did not recommend any modification of the commercial fishery management measures. The Monitoring Committee will discuss recreational fishery management measures in November 2009. The Council is bound by the Magnuson-Stevens Act to set annual catch limits no higher than the ABC recommended by their SSC and, accordingly, voted to recommend a TAC and TAL consistent with the SSC's recommendation.

*Status quo* measures for black sea bass, consistent with the Council's recommendation is an ABC/TAC of 2.71 million lb (1,229 mt). After removing estimated discards of 410,000 lb (186 mt) the 2010 TAL is 2.3 million lb (1,043 mt). The Council voted to set aside up to 3 percent of the TAL, 69,000 lb (31 mt), for research. The FMP specifies that the TAL is to be allocated 49 percent to the commercial sector and 51 percent to the recreational sector; therefore, the initial TAL would be allocated 1.09 million lb (494 mt) to the commercial sector and 1.14 million lb (517 mt) to the recreational sector.

NMFS is proposing to implement these Council-recommended measures for the 2010 black sea bass fisheries.

#### Classification

Pursuant to section 304(b)(1)(A) of the Magnuson-Stevens Act, the NMFS Assistant Administrator has determined that this proposed rule is consistent with the Summer Flounder, Scup, and Black Sea Bass FMP, other provisions of the Magnuson-Stevens Act, and other applicable law, subject to further consideration after public comment.

These proposed specifications are exempt from review under Executive Order 12866.

An IRFA was prepared, as required by section 603 of the Regulatory Flexibility Act (RFA). The IRFA describes the economic impact these proposed specifications, 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. A copy of this analysis is available from NMFS (see ADDRESSES). A summary of the analysis follows.

The total gross revenue for the individual vessels that would be directly regulated by this action is less than \$4.0 million for commercial fishing and \$6.5 million for recreational fishing activities. All vessels that would be impacted by this proposed rulemaking are therefore considered to be small entities and, thus, there would be no disproportionate impacts between large and small entities as a result of the proposed rule. 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 2010 specifications could affect 2,213 vessels that held a Federal summer flounder, scup, and/or black sea bass permit in 2008 (the most recent year of complete permit data). However, the more immediate impact of this rule will likely be felt by the 809 vessels that actively participated in these fisheries (i.e., landed these species) in 2008.

There are no new reporting or recordkeeping requirements contained in any of the alternatives considered for this action. In addition, NMFS is not aware of any relevant Federal rules that may duplicate, overlap, or conflict with this proposed rule.

If the Council took no action regarding the 2010 specifications, the following would occur: (1) No

specifications for the 2010 summer flounder, scup, and black sea bass fisheries; (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 2010; and (4) 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. Under the no action alternative, the fisheries would operate without an identified cap on allowable landings because the quotas implemented for 2009 expire on December 31, 2009, and there are no provisions to roll-over those quota provisions into 2010 if specifications are not published for the year. Therefore, the no action alternative is not considered to be a reasonable alternative to the preferred action.

The Council analyzed three sets of combined TAL alternatives for the 2010 summer flounder, scup, and black sea bass fisheries. Of these, one alternative, labeled Alternative 2, contained the most restrictive TAL options (i.e., lowest catch levels). While this alternative would achieve the objectives of the proposed action for all three species, it has the highest potential economic impact on small entities in the form of potential foregone fishing opportunities. Alternative 2 was not preferred by the Council because other alternatives considered have lower impacts on small entities while achieving the stated objectives of this proposed rule.

The Council analyzed two sets of TAL alternatives for the three species that would accomplish the stated objectives of the proposed action and that would minimize significant economic impact of the proposed rule on small entities. Alternative 1 (Council's preferred) would implement the following TALs in 2010: Summer flounder, 22.13 million lb (10,038 mt); scup, 14.11 million lb (6,400 mt); and black sea bass, 2.30 million lb (1,043 mt). Alternative 3 (least restrictive/highest quota levels) would implement the following TALs in 2010: Summer flounder, 26.31 million lb (11,934 mt); scup, 15.40 million lb (6,985 mt); and black sea bass, 4.80 million lb (2,177 mt).

Council staff conducted preliminary analysis on the potential economic impact of changes in recreational harvest limits associated with the alternatives. For the purposes of the RFA, the only entities affected by the

proposed changes to the recreational harvest limit are owners and operators of recreational party/charter (for hire) vessels. These analyses indicate that it is possible that adverse economic impacts could occur under Alternative 1 but would not be likely under Alternative 3. The methods utilized in the analysis compare 2008 recreational landings to the respective alternative's recreational harvest limit and make inferences on possible negative impacts to the demand for party/charter vessel trips and angler participation. While useful for a general statement on potential impacts, demand for party/charter trips has remained relatively stable for many years regardless of increases or decreases in the recreational harvest limit and ascertaining angler satisfaction relative to a total recreational harvest limit is subjective. More thorough analysis of recreational fisheries impacts will be conducted following the Council's recommendations for recreational management measures in December 2009. Once actual 2010 recreational management measures recommendations are known, more detailed analysis, including an IRFA, will be prepared by the Council.

To assess the impact of the alternatives on commercial fisheries, the Council conducted both threshold analysis and analysis of potential changes in ex-vessel gross revenue that would result from Alternatives 1 and 3. Some degree of caution should be utilized when interpreting the economic impact data as a host of variations could influence the outcomes of the analyses. Vessels have permits for multiple fisheries and may supplement income by landing other species; economic dependence on a particular species may be masked by vessels landing multiple species; ex-vessel value of the three species may change from the estimated

values utilized in the analysis; revenues may increase or decrease as a result of changes to possession limits or seasons set by individual states; vessels that fish for these three species under state permits are not well captured by the analysis, and reduction in commercial quota to account for previous years' overages may still occur in the specifications final rule.

Under Alternative 1 (Council's preferred), analysis indicates that 88 vessels were expected to incur no revenue change and 721 vessels were expected to incur revenue increases relative to 2009. Utilizing ex-vessel information from 2008, the Council estimated that Alternative 1 would increase cumulative summer flounder and scup vessel revenues by \$5.10 million and \$2.56 million, respectively. Black sea bass vessel revenues are projected to remain unchanged from 2009 levels. If these increases are distributed equally among the 652 vessels that landed summer flounder in 2008, the resulting increase in revenue per vessel would be \$7,822. If equally distributed among the 375 vessels that landed scup in 2008, the average revenue increase associated with the increase in scup quota is \$6,827 per vessel. Under Alternative 1, individual vessel revenue is projected to remain unchanged for vessels landing black sea bass.

Under Alternative 3 (least restrictive TALs), analysis indicates that the 809 vessels that participated in 2008 summer flounder, scup, and black sea bass fisheries would be expected to incur revenue increases. The 2010 quotas associated with Alternative 3 would increase summer flounder, scup, and black sea bass revenues by approximately \$10.81 million, \$3.64 million, and \$3.51 million, respectively, relative to 2009. If the revenue increases were equally distributed across the 809

vessels that landed summer flounder, scup, and black sea bass in 2008, the average increase in revenue would be \$22,220 per vessel.

The Council selected Alternative 1 (preferred) over Alternative 3 (least restrictive) because, the catch and landing levels associated with Alternative 1 are consistent with the ABC recommendations from the Council's SSC. Adoption of Alternative 3 measures would exceed the SSC recommendations for ABC for all three species and would violate section 302(h)(6) of the Magnuson-Stevens Act, which states that the Council must develop annual catch limits for each managed fishery that may not exceed the fishing level recommendation of the SSC (i.e., the ABC). In addition, the summer flounder TAL associated with Alternative 3 is not projected to provide the necessary stock rebuilding by January 1, 2013, as required by the summer flounder rebuilding plan. As such, the IRFA provided by the Council indicates that the TALs of Alternative 1 satisfy the objectives of the applicable statutes and rebuilding program and minimize, to the extent practicable, the adverse impacts of the proposed rule on directly regulated small entities. NMFS agrees with the Council's IRFA analysis and rationale for recommending TAL Alternative 1. As such, NMFS is proposing to implement the TALs contained in Alternative 1 (Summer flounder, 22.13 million lb (10,038 mt); scup, 14.11 million lb (6,400 mt); and black sea bass, 2.30 million lb (1,043 mt)) for 2010.

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

Dated: October 30, 2009.

**James W. Balsiger,**

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