

pursuant to the Congressional Review Act, see 5 U.S.C. 801(a)(1)(A).

**List of Subjects in 47 CFR Part 73**

Communications equipment, Reporting and recordkeeping requirements, Television.

Federal Communications Commission.

**Marlene H. Dortch,**

*Secretary.*

**Final Rules**

■ For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR part 73 as follows:

**PART 73—RADIO BROADCAST SERVICES**

■ 1. The authority citation for part 73 continues to read as follows:

**Authority:** 47 U.S.C. 154, 303, 334, 336 and 339.

■ 2. Section 73.686 is amended by revising the heading of paragraph (d) and by adding a new paragraph (e) to read as follows:

**§ 73.686 Field strength measurements.**

\* \* \* \* \*

(d) *NTSC—Collection of field strength data to determine NTSC television signal intensity at an individual location—cluster measurements—*

\* \* \* \* \*

(e) *DTV—Collection of field strength data to determine digital television signal intensity at an individual location—cluster measurements—(1) Preparation for measurements—*

(i) *Testing antenna.* The test antenna shall be either a standard half-wave dipole tuned to the center frequency of the channel being tested or a gain antenna provided its antenna factor for the channel(s) under test has been determined. Use the antenna factor supplied by the antenna manufacturer as determined on an antenna range.

(ii) *Testing locations.*—At the test site, choose a minimum of five locations as close as possible to the specific site where the site’s receiving antenna is located. If there is no receiving antenna at the site, choose a minimum of five locations as close as possible to a reasonable and likely spot for the antenna. The locations shall be at least three meters apart, enough so that the testing is practical. If possible, the first testing point should be chosen as the center point of a square whose corners are the four other locations. Calculate the median of the five measurements (in units of dBμ) and report it as the measurement.

(iii) *Multiple signals.*—

(A) If more than one signal is being measured (*i.e.*, signals from different transmitters), use the same locations to measure each signal.

(B) For establishing eligibility of a satellite subscriber to receive distant network signals, only stations affiliated with the network in question that are located in the same Nielsen Designated Market Area (DMA) as the test site may be considered and tested.

(2) *Measurement procedure.* Measurements shall be made in accordance with good engineering practice and in accordance with this section of this chapter. At each measuring location, the following procedure shall be employed:

(i) *Testing equipment.* Perform an on-site calibration of the test instrument in accordance with the manufacturer’s specifications. Tune a calibrated instrument to the center of the channel being tested. Measure the integrated average power over the full 6 megahertz bandwidth of the television signal. The intermediate frequency of the instrument should be set to 100 kilohertz unless the instrument is specifically designed by the manufacturer to use an alternative i.f. setting. The instrument must be capable of integrating over the selected i.f. for the 6 megahertz channel bandwidth. Take all measurements with a horizontally polarized antenna. Use a shielded transmission line between the testing antenna and the field strength meter. Match the antenna impedance to the transmission line at all frequencies measured, and, if using an un-balanced line, employ a suitable balance. Take account of the transmission line loss for each frequency being measured.

(ii) *Weather.* Do not take measurements during periods of inclement weather, including, but not limited to, periods of heavy rainfall, snowfall accumulation, high windspeed, or any combination thereof.

(iii) *Antenna elevation.* When field strength is being measured for a one-story building, elevate the testing antenna to 6.1 meters (20 feet) above the ground. In situations where the field strength is being measured for a building taller than one-story, elevate the testing antenna 9.1 meters (30 feet) above the ground.

(iv) *Antenna orientation.* Orient the testing antenna in the direction which maximizes the value of field strength for the signal being measured. If more than one station’s signal is being measured, orient the testing antenna separately for each station.

(3) Written record shall be made and shall include at least the following:

(i) A list of calibrated equipment used in the field strength survey, which for each instrument specifies the manufacturer, type, serial number and rated accuracy, and the date of the most recent calibration by the manufacturer or by a laboratory. Include complete details of any instrument not of standard manufacture.

(ii) A detailed description of the calibration of the measuring equipment, including field strength meters, measuring antenna, and connecting cable.

(iii) For each spot at the measuring site, all factors which may affect the recorded field, such as topography, height and types of vegetation, buildings, obstacles, weather, and other local features.

(iv) A description of where the cluster measurements were made.

(v) Time and date of the measurements and signature of the person making the measurements.

(vi) For each channel being measured, a list of the measured value of field strength (in units of dBμ after adjustment for line loss and antenna factor) of the five readings made during the cluster measurement process, with the median value highlighted.

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**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

**50 CFR Part 648**

[Docket No. 101029427–0609–02]

RIN 0648–XY82

**Fisheries of the Northeastern United States; Summer Flounder, Scup, and Black Sea Bass Fisheries; 2011 Summer Flounder, Scup, and Black Sea Bass Specifications; Preliminary 2011 Quota Adjustments; 2011 Summer Flounder Quota for Delaware**

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

**ACTION:** Final rule.

**SUMMARY:** NMFS issues final specifications for the 2011 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 fishing vessels

from landing summer flounder in Delaware in 2011 due to continued quota repayment from previous years' overages.

The actions of this final rule are necessary to comply with regulations 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 these species are not overfished or subject to overfishing in 2011. In addition, this action implements measures to ensure continued rebuilding of the summer flounder stock, which remains under a Magnuson-Stevens Act rebuilding program.

**DATES:** Effective January 1, 2011, through December 31, 2011.

**ADDRESSES:** Copies of the specifications document, consisting of Environmental Assessment (EA), Initial Regulatory Flexibility Analysis (IRFA), and other supporting documents used by the Summer Flounder, Scup, and Black Sea Bass Monitoring Committees and Scientific and Statistical Committee (SSC) are available from Dr. Christopher Moore, Executive Director, Mid-Atlantic Fishery Management Council, Suite 201, 800 North State Street, Dover, DE 19901. The specifications document is also accessible via the Internet at <http://www.nero.noaa.gov>. The Final Regulatory Flexibility Analysis (FRFA) consists of the IRFA, public comments and responses contained in this final rule, and the summary of impacts and alternatives contained in this final rule. Copies of the small entity compliance guide are available from Patricia A. Kurkul, Regional Administrator, Northeast Region, National Marine Fisheries Service, 55 Great Republic Drive, Gloucester, MA 01930-2298.

**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 under the provisions of the FMP developed by the Mid-Atlantic Fishery Management Council (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 (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. The Council prepared the FMP under the authority of the Magnuson-Stevenson Act, 16 U.S.C. 1801 *et seq.* Regulations implementing the FMP appear at 50 CFR part 648, subparts A (general provisions), G (summer flounder), H (scup), and I (black sea bass). General regulations governing U.S. fisheries also appear at 50 CFR part 600. States manage summer flounder within 3 nautical miles of their coasts, under the Commission's plan for summer flounder, scup, and black sea bass. The Federal regulations govern vessels fishing in the exclusive economic zone (EEZ), as well as vessels possessing a Federal fisheries permit, regardless of where they fish.

The regulations implementing the FMP 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. 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 2011 specifications for these fisheries was provided in the proposed specifications (75 FR 70192; November 17, 2010). That information is not repeated here.

NMFS will establish the 2011 recreational management measures (i.e., minimum fish size, possession limits, and fishing seasons) for summer flounder, scup, and black sea bass by publishing proposed and final rules in the **Federal Register** at a later date, after the Council concludes its deliberations and submits its recommendations as specified in the FMP.

**Changes From the Proposed to Final Specifications Rule**

The FMP provides that up to 3 percent of landing levels may be set aside for research. The proposed rule proposed the maximum amounts (3 percent) of the Total Allowable Landings (TALs) be set aside for summer flounder (884,400 lb (401 mt)), scup (600,000 lb (272 mt)) and black sea

bass (108,000 lb (49 mt)); however, the full 3 percent was not awarded for either summer flounder or scup in the final grant awards for the 2011 RSA program. Only 521,441 lb (237 mt) of summer flounder and 396,500 lb (180 mt) of scup were awarded as 2011 RSA. Thus, this rule increases slightly the commercial quotas and recreational harvest limits for both summer flounder and scup to account for the final RSA amounts. No changes occurred to the black sea bass specifications as the 3 percent was fully utilized by the 2011 grant awards process. No other changes occurred from the proposed to final specifications rule.

**2011 Specifications**

This final rule implements the following specifications:

**Summer Flounder:** A TAL of 29.48 million lb (13,372 mt), including RSA of 521,441 lb (237 mt); a commercial quota of 17,375,135 lb (7,881 mt); and a recreational harvest limit of 11,583,424 lb (5,254 mt).

**Scup:** A Total Allowable Catch (TAC) of 24.1 million lb (10,932 mt); a 20.0 million lb TAL (9,072 mt), including RSA of 396,500 lb (180 mt); a commercial quota of 15,600,000 lb (7,076 mt); and a recreational harvest limit of 4,312,770 lb (1,956 mt). NMFS acknowledges that the Council, at its December 15, 2010, meeting, voted to recommend an increase to the 2011 scup TAC, TAL, commercial quota, and recreational harvest limit. This recommendation is still under development and consideration and will be addressed through separate rulemaking, if needed.

**Black Sea Bass:** A TAL of 3,600,000 lb (1,633 mt), including RSA of 108,000 lb (49 mt); a commercial quota of 1,711,080 lb (776 mt); and a recreational harvest limit of 1,780,920 lb (808 mt).

Additional detail for each species' specifications is provided, as follows.

**Summer Flounder**

Summer flounder remain under a stock rebuilding program and must achieve the rebuilding biomass target (i.e.,  $B_{MSY}$  (Maximum Sustainable Yield)) by January 1, 2013. Analysis conducted by the Southern Demersal Working Group (SDWG) indicates that the 2011 summer flounder TAL implemented by this rule is projected to provide the necessary stock growth to achieve the rebuilding objective within the specified time frame. This TAL also satisfies a 2000 Federal Court Order (*Natural Resources Defense Council v. Daley*, Civil No. 1:99 CV 00221 (JLG)) which requires the annual summer flounder TAL to have at least a 50-percent probability of success.

This TAL has a 50-percent probability of constraining fishing mortality below the management target of  $F_{40\text{ percent}} = 0.255$  and a 98-percent probability of constraining fishing mortality below the overfishing threshold of  $F_{MSY\text{ proxy}} = 0.310$ .

Consistent with the revised quota setting procedures for the FMP (67 FR 6877, February 14, 2002), summer flounder overages are determined based upon landings for the period January–October 2010, plus any previously unaccounted for overages from January–December 2009. Table 1 summarizes, for

each State, the commercial summer flounder percent shares as outlined in § 600.100(d)(1)(I), the resultant 2011 commercial quota (both initial and less the RSA), the quota overages as described above, and the final adjusted 2011 commercial quota, less the RSA.

TABLE 1—FINAL STATE-BY-STATE COMMERCIAL SUMMER FLOUNDER ALLOCATIONS FOR 2011

State	FMP percent share	Initial quota (TAL)		Initial quota, less RSA		2010 Quota overages (through 10/31/10)		Adjusted quota, less RSA	
		lb	kg	lb	kg	lb	kg	lb	kg
ME	0.04756	8,412	3,816	8,264	3,748	0	0	8,264	3,749
NH	0.00046	81	37	80	36	0	0	80	36
MA	6.82046	1,206,403	547,224	1,185,064	537,545	28,112	12,752	1,156,952	524,793
RI	15.68298	2,774,006	1,258,289	2,724,939	1,236,032	0	0	2,724,939	1,236,032
CT	2.25708	399,232	181,092	392,171	177,889	0	0	392,171	177,889
NY	7.64699	1,352,600	613,539	1,328,675	602,687	0	0	1,328,675	602,687
NJ	16.72499	2,958,316	1,341,892	2,905,990	1,318,157	0	0	2,905,990	1,318,157
DE	0.01779	3,147	1,427	3,091	1,402	56,259	25,519	-53,168	-24,117
MD	2.03910	360,676	163,603	354,296	160,709	55,966	25,386	298,330	135,322
VA	21.31676	3,770,509	1,710,303	3,703,816	1,680,051	0	0	3,703,816	1,680,051
NC	27.44584	4,854,620	2,202,056	4,768,752	2,163,106	0	0	4,768,752	2,163,106
Total	100.00	17,688,000	8,023,278	17,375,135	7,881,362	140,337	63,657	17,287,969	7,841,823

Notes: 2010 quota overage is determined through comparison of landings for January through October 2010, plus any landings in 2009 in excess of the 2009 quota (that were not previously addressed in the 2010 specifications) for each State. For Delaware, this includes continued repayment of overharvest from previous years. Total quota is the sum for all States with an allocation. A State with a negative number has a 2011 allocation of zero (0). Kilograms are as converted from pounds and may not necessarily add due to rounding.

**Delaware Summer Flounder Closure**

Table 1 indicates that, for Delaware, the amount of overharvest from previous years is greater than the amount of commercial quota allocated to Delaware for 2011. As a result, there is no quota available for 2011 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 Administrator, Northeast Region, NMFS, has determined no longer has commercial quota available for harvest. Therefore, effective January 1, 2011, landings of summer flounder in Delaware by vessels holding commercial Federal summer flounder permits are prohibited for the 2011 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 2011 calendar year, unless additional quota becomes available through a transfer, as mentioned above.

**Scup**

As previously noted in the preamble of this rule, the Council voted to

recommend an increase to the 2011 scup TAC, TAL, commercial quota, and recreational harvest limit during their December 15, 2010, meeting. This recommendation is still under development and consideration and will be addressed through subsequent rulemaking, as needed. The 24.1 million lb (10,932 mt) 2011 TAC is divided into commercial (78 percent) and recreational (22 percent) allocations, in accordance with the FMP; the respective discard estimates are then subtracted to yield the preliminary TAL of 20.0 million lb (9,072 mt). After deducting 396,500 lb (180 mt) from the preliminary TAL for 2011 RSA, the commercial quota is reduced to 15.6 million lb (7,076 mt), with a recreational harvest limit of 4.3 million lb (1,956 mt).

The commercial TAC, discards, and TAL (commercial quota) are 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. Consistent with the revised quota setting procedures established for the FMP (67 FR 6877, February 14, 2002),

scup overages are determined based upon landings for the Winter I and Summer 2010 periods, plus any previously unaccounted for landings from the 2009 Winter II period. There were no preliminary overages of the 2010 Winter I or Summer Period quotas or previously unaccounted for overages of any 2009 quota periods; therefore, no adjustment to the 2011 scup specifications is required in this final rule. Any overage of the 2010 Winter II period will be addressed in July 2011, prior to the start of the 2011 Winter II fishery.

Per the quota accounting procedures in the FMP, after June 30, 2011, NMFS will compile all available landings data for the 2010 Winter II quota period and compare the landings to the 2010 Winter II quota period allocation, inclusive of any transfer from the 2010 Winter I quota period. Any overages will be determined, and deductions, if needed, will be made to the Winter II 2011 allocation and published in the **Federal Register**. Table 2 contains the quota period allocations for the 2011 commercial scup fishery.

TABLE 2—INITIAL COMMERCIAL SCUP QUOTA ALLOCATIONS FOR 2011 BY QUOTA PERIOD

Quota period	Percent share	Total allowable catch		Estimated discards		Initial quota		Initial quota less over-ages (through 10/31/2009)		Adjusted quota less over-ages and RSA		Federal possession limits (per trip)	
		lb	mt	lb	mt	lb	mt	lb	mt	lb	mt	lb	kg
Winter I	45.11	8,479,778	3,846	1,442,618	645	7,037,160	3,192	N/A	6,897,648	3,129	30,000	13,608	
Summer	38.95	7,321,821	3,321	1,245,621	565	6,076,200	2,756	N/A	5,955,738	2,701	N/A	N/A	
Winter II	15.94	2,996,401	1,359	509,761	231	2,486,640	1,128	N/A	2,437,342	1,106	2,000	907	
Total	100.0	18,798,000	8,527	3,198,000	1,451	15,600,000	7,076	N/A	15,290,730	6,936	N/A	N/A	

Notes: 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. Metric tons are as converted from pounds and may not necessarily add due to rounding. N/A = Not applicable.

Consistent with the unused Winter I commercial scup quota rollover provisions at § 648.120(a)(3), this final rule maintains the Winter II possession limit-to-rollover amount ratios that have been in place since the 2007 fishing year, as shown in Table 3. 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 a maximum possession limit of 8,000 lb (3,629 kg).

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

Initial Winter II possession limit		Rollover from Winter I to Winter II		Increase in initial Winter II possession limit		Final Winter II possession limit after rollover from Winter I to Winter II	
lb	kg	lb	mt	lb	kg	lb	kg
2,000	907	0–499,999	0–227	0	0	2,000	907
2,000	907	500,000–999,999	227–454	1,500	680	3,500	1,588
2,000	907	1,000,000–1,499,999	454–680	3,000	1,361	5,000	2,268
2,000	907	1,500,000–1,999,999	680–907	4,500	2,041	6,500	2,948
2,000	907	2,000,000–2,500,000	907–1,134	6,000	2,722	8,000	3,629

**Black Sea Bass**

The FMP specifies that the annual TAL is allocated 49 percent to the commercial sector and 51 percent to the recreational sector. After deducting 108,000 lb (49 mt) of RSA for the three selected research projects, the TAL is allocated to the commercial sector as a 1.76 million lb (798 mt) commercial quota and to the recreational sector as a 1.84 million lb (835 mt) recreational harvest limit.

Consistent with the revised quota setting procedures for the FMP, black sea bass overages are determined based upon landings for the period January-September 2010, plus any previously unaccounted for landings from January-December 2009. Landings exceeded the quota by 33,434 lb (1.5 mt) during the 2009 black sea bass commercial fishery. However, because 2010 black sea bass commercial landings to date remain substantially below the published 2010 quota, no adjustment to the 2011 commercial quota appears necessary at this time to account for the overage in 2009. If 2010 landings remain below the difference between the 2010 quota and the 2009 overage, no adjustment to the 2012 black sea bass quota would be necessary. If landings exceed the 2010 quota when the complete 2010 fishing year landings are examined next year, NMFS will adjust the 2012 commercial quota, accordingly.

**Comments and Responses**

NMFS received four comments during the 15-day comment period for the November 17, 2010, proposed rule. One comment from the State of Connecticut supported all of the proposed specification measures. Two comments from recreational fishing groups supported the summer flounder and scup proposed measures but opposed the black sea bass specifications. Some

of the issues raised by the commenters cannot be addressed through the Council’s specification process and this final rule. Specifically, some commenters raised issues regarding recreational fishery issues that will be addressed through the annual recreational management measures rulemaking process that began with the Council’s December 15, 2010, meeting. In the spring of 2011, NMFS will conduct notice-and-comment rulemaking to implement recreational management measures for these three species. In addition, some comments focused on the FMP allocation of scup between the recreational and commercial sectors and between scup commercial quota periods. The allocations are specified in the FMP and cannot be modified through the specification process; such a change would require either a Council-initiated FMP framework adjustment or amendment. The remaining comments applicable to the 2011 specifications and RSA projects raised the same or similar issues; therefore, the significant issues and concerns are summarized and responded to here.

*Comment 1:* Two comments stated that the proposed 2011 catch levels for scup would represent a considerable departure from optimum yield (OY) for the stock. The comments recognize that the scup stock is fully rebuilt and assert that the 2011 catch levels are overly precautionary.

*Response:* As was stated in response to a similar comment submitted for the 2010 specifications, NMFS continues to interpret the requirement to achieve OY on a continual basis as producing the long-term series of catches such that the average catch is equal to OY, overfishing is prevented, and long-term average biomass is near or above  $B_{MSY}$ . As such, National Standard 1, which directs

fisheries to be managed for OY, does not contemplate that the OY will necessarily be achieved in a single year given the natural fluctuation of fish stocks in response to environmental conditions.

NMFS acknowledges that the 2011 catch level recommendation for scup, as implemented in this final rule, is conservative relative to the  $B_{MSY}$  values for the stocks. Indications from the stock assessment do indicate that the biomass is well above  $B_{MSY}$  and the stock was declared rebuilt in 2009; however, the SSC provided a clear rationale for its 2011 ABC recommendation to the Council, identifying several specific sources of uncertainty associated with the stock assessment and citing concerns about increasing catch levels rapidly to the MSY level before the recently new stock assessment first used for the 2010 fishing year has been further evaluated relative to fishery performance. The approach taken by the SSC and Council in recommending the 2011 scup specifications to NMFS for implementation through this final rule is wholly consistent with the National Standard 1 guidelines (74 FR 3178; January 16, 2009), which contemplate reducing catch levels from OY in situations where the uncertainties pertaining to the fishery necessitate so doing. As the level of uncertainty associated with the scup stock assessment decreases, either through improvement in the data, assessment methods, or through validating assessment-related output and estimates through the fishery dependent data and fishery performance, the SSC should be able to utilize a less conservative approach in recommending ABC if the stock status remains robust, thereby moving landing levels to near or at MSY.

*Comment 2:* Two comments opposed the black sea bass TAC of 4.5 million lb (2,041 mt) and TAL of 3.6 million lb (1,633 mt). The comments state that the black sea bass stock is rebuilt, not overfished, and not experiencing overfishing and that the SSC's selection of a constant catch strategy utilizes inappropriate years of very low harvest as the foundation of the constant catch starting point. The commenters request that NMFS implement a TAC of 5.86 million lb (2,658 mt) and a corresponding TAL of 4.96 million lb (2,250 mt), based on the mean TAL from the years 2002–2009.

*Response:* NMFS is implementing, through this final rule, the SSC and Council recommended TAC of 4.5 million lb (2,041 mt) and TAL of 3.6 million lb (1,633 mt) for the 2011 black sea bass fishery. The SSC has indicated that black sea bass biomass remained stable or increased with a TAC in the 4–4.5 million lb range (1,814–2,041 mt). Furthermore, the SSC identified several sources of uncertainty associated with determining the overfishing limit (OFL) and ABC for the black sea bass stock, and deems the 2011 ABC recommendation provided and implemented through this rule as the basis for deriving the 2011 TAC and TAL as consistent with the best available scientific information. Specifically, the ABC and associated TAC/TAL implemented through this rule has been recommended by the SSC as the level necessary to ensure scientific uncertainty is mitigated in 2011 so that the black sea bass stock will have a low likelihood of being subject to overfishing. The request submitted a comment on the proposed rule lacks any sufficient explanation of how or why the SSC-recommended ABC is inconsistent with the best available scientific information. It offers only an alternative range of years upon which to base an ABC without any technical explanation of how this value affects the stock or prevents overfishing. Instead, the commenters cite, without any specific justification data, a potential negative socio-economic impact of the 4.5 million lb (2,041 mt) ABC/TAC on recreational fishermen. While a higher catch level could potentially reduce socio-economic impacts as indicated in the Council's economic impact analyses, such levels were considered and rejected by both the Council and NMFS as they would be inconsistent with the goals and objectives of the FMP, the Magnuson-Stevens Act, and National Standard 2 as a higher ABC/TAC would exceed the recommendation of the SSC (see FRFA for additional impacts

discussion). Based on these points, NMFS cannot disapprove the Council and SSC-recommended ABC and implement a higher catch level, as requested by the two commenters.

*Comment 3:* Individuals representing various recreational fishing interest jointly submitted a comment letter opposing the proposal to set aside summer flounder, scup, and black sea bass TAL in support of the RSA program. This comment stemmed from their belief that the RSA program is funding research that should be funded by NMFS. They were particularly concerned by the funding of a nearshore trawl survey by the RSA program. In addition, expressed concern that the project selection process is not transparent and does not allow for public input.

*Response:* For the 2011 fishing year, the Council chose to reserve up to 3 percent of the summer flounder, scup, and black sea bass TAL for the 2011 Mid-Atlantic RSA Program. Although projects are ultimately selected by the Science and Research Director of the Northeast Fisheries Science Center, projects must address research priorities that are identified by the Council. The Council receives public input on the RSA research priorities through RSA Committee and Council meetings. The Council's RSA research priorities for 2011 include resource assessment and monitoring work, including fishery independent surveys for all Mid-Atlantic species, especially in the near shore zone (as provided by the NEAMAP survey). As such, funding work as described under the proposed rule is consistent with the Council's intent for the Mid-Atlantic RSA program.

In response to the comment that the selection process lacks transparency, the proposal solicitation announcement (Federal Funding Opportunity NOAA–NMFS–NEFSC–2011–2002247) outlines the process that NMFS must follow prior to making any award. This process ensures successful proposals have high technical merit and management relevance. As such, at least three technical reviewers evaluate each proposal from a scientific perspective, and NMFS convenes a meeting with the RSA Committee to review all of the proposals. This process ensures that qualified and relevant projects are selected in a timely manner and in compliance with the confidentiality rules and regulations established by NOAA Grants.

Therefore, under the 2011 Mid-Atlantic RSA Program, NMFS will implement the Council's decision to set-aside summer flounder, scup and black

sea bass TAL to support projects that address the Council's RSA research priorities.

### Classification

The Administrator, Northeast Region, NMFS, determined that this final rule is necessary for the conservation and management of the summer flounder, scup, and black sea bass fisheries and that it is consistent with the Magnuson-Stevens Act and other applicable laws.

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, to ensure that the final specifications are in place on January 1, 2011. This action establishes specifications (*i.e.*, 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 EA/RIR/IRFA in support of the specifications that is developed by the Council. This document was received by NMFS in mid-September 2010. Documentation in support of the Council's recommended specifications is required for NMFS to provide the public with information from the environmental and economic analyses as required in rulemaking. The proposed rule published on November 17, 2010, with a comment period ending December 2, 2010. Publication of the adjusted summer flounder quota at the start of the fishing year that begins January 1, 2011, is required by the order of Judge Robert Doumar in *North Carolina Fisheries Association v. Daley*.

If the 30-day delay in effectiveness were not waived, the lack of effective quota specifications on January 1, 2011, would present significant confusion to the complex cooperative management regime governing these fisheries. The summer flounder, scup, and black sea bass fisheries are all expected, based on historic participation and harvest patterns, to be very active at the start of the fishing season in 2011. Individual States would be unable to set commercial possession and/or trip limits, which apportion the catch over the entirety of the calendar year. NMFS would be unable to control harvest in any way, as there would be no quotas in place for any of the three species until the regulations are effective. NMFS would be unable to control harvest or close the fishery should landings exceed the quotas. 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 a race for fish wherein

uncontrolled landings could occur. Disproportionately large harvest occurring within the first weeks of 2011 could have distributional effects on other quota periods, and would disadvantage some gear sectors or owners and operators of smaller vessels that typically fish later in the fishing season. There is no historic precedent by which to gauge the magnitude of harvest that might occur should quotas for these three species not be in place during the first weeks of 2011. It is reasonable to conclude that the commercial fishing fleet possesses sufficient capacity to exceed the established quotas for these three species before the regulations would become effective, should quotas not be in place on January 1, 2011. Should this occur, the fishing mortality objectives for all three species and the summer flounder rebuilding plan could be compromised.

This final rule has been determined to be not significant for purposes of Executive Order 12866 because this action contains no implementing regulations.

This final rule does not duplicate, conflict, or overlap with any existing Federal rules.

A FRFA was prepared pursuant to 5 U.S.C. 604(a), and 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 this final rule, is contained in the preambles to the proposed rule and this final rule and is not repeated here.

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

No changes to the proposed rule were required to be made as a result of public comments. None of the comments received raised specific issues regarding the economic analyses summarized in the IRFA or the economic impacts of the rule more generally. 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 commercial or charter/party 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 2011 specifications could affect 2,206 vessels that held a Federal summer flounder, scup, and/or black sea bass permit in 2009 (the most recent year of complete permit data). However, the more immediate impact of this rule will likely be realized by the 810 vessels that actively participated in these fisheries (*i.e.*, landed these species) in 2009.

#### *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 changes in year-to-year quota specifications may be offset by adjustments to such measures as commercial fish sizes, changes to mesh sizes, gear restrictions, or possession and trip limits that may increase efficiency or value of the fishery. For 2011, no such adjustments were recommended by the Council; therefore, this final rule contains no 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 the maximum availability of fish while still ensuring that the required objectives and directives of the FMP, its implementing regulations, and the Magnuson-Stevens Act are met. In particular, the Council's SSC has made recommendations for the 2011 ABC level for all three stocks. NMFS considers this recommendation to be consistent with National Standard 2. Establishment of catch levels higher

than the SSC ABC recommendations would require substantial, compelling argument and documentation that the recommendations were not, in fact, based on the best available scientific information. NMFS-approved measures for the summer flounder fishery must also ensure that the statutory requirements of the stock rebuilding program are met by the January 1, 2013, rebuilding deadline.

The economic analysis for the 2011 specification assessed the impacts for quota alternatives that achieve the aforementioned objectives. The no action alternative, wherein no quotas are established for 2011, 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 in 2011 would substantially complicate the approved management programs for these three species. NMFS is required under the FMP's implementing regulations to specify and implement a TAL (and TAC for scup) for these fisheries on an annual basis. The no action alternative would result in no fishing limits for 2011, and could result in overfishing of the resources and substantially compromise the mortality and/or stock rebuilding objectives for each species.

Furthermore, Alternative 2 from the Council's analysis contains the most restrictive TAL options (*i.e.*, the lowest catch levels—summer flounder, 22.13 million lb (10,038 mt); scup, 14.11 million lb (6,400 mt); black sea bass, 2.30 million lb (1,043 mt)). While this alternative would achieve the required objectives for all three species, it carries the highest potential negative impact on small entities in the form of foregone fishing opportunity. Alternative 2 was not preferred by the Council or NMFS because other alternatives considered have lower impacts on small entities while achieving the stated objectives of the 2011 specification process.

Alternative 3 (least restrictive quotas; highest catch levels—summer flounder, 35.05 million lb (15,898 mt); scup, 28.96 million lb (13,136 mt); and black sea bass, 4.35 million lb (1,973 mt)) would produce the smallest impact on small entities. For all three species, the respective quotas under Alternative 3 are inconsistent with the SSC's catch level recommendations. Because the respective Alternative 3 measures would establish annual fishing limits that exceed the fishing level recommendations of the Council's SSC, they are inconsistent with the Magnuson-Stevens Act requirements and cannot be implemented for 2011,

despite having the lowest associated impact on small entities.

Through this final rule, NMFS implements the summer flounder, scup, and black sea bass TALs contained in Alternative 1 (summer flounder, 29.48 million lb (13,372 mt); scup, 20.0 million lb (9,072 mt); and black sea bass, 3.6 million lb (1,633 mt)), the Council's preferred alternatives, which consist of the quota alternatives that pair the lowest economic impacts to small entities and meet the required objectives of the FMP and the Magnuson-Stevens Act. Relative to 2010, the 2011 commercial quotas and recreational harvest measures in this action would result in the following TAL changes for the commercial and recreational sectors:

- (1) A 33.2-percent increase for summer flounder;
- (2) A 41.7-percent increase for scup; and
- (3) A 2.7-percent reduction for black sea bass.

The respective TALs contained in Alternative 1 for all three species were selected because they satisfy NMFS's obligation to implement specifications that are consistent with the goals, objectives, and requirements of the FMP, its implementing regulations, and the Magnuson-Stevens Act. The F rates associated with the TALs for all three species all have very low likelihoods of causing overfishing to occur in 2011. TAL Alternative 1 for summer flounder is also projected to provide the necessary continued stock rebuilding to achieve the  $SSB_{MSY}$  by the rebuilding period ending date of January 1, 2013.

The revenue decreases associated with allocating a portion of available catch to 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 program can be sold, and the profits used to offset the costs of research. As such, total gross revenues to the industry are not expected to decrease substantially, if at all, as a result of this final rule authorizing RSA for 2011.

#### *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 Web site: <http://www.nero.noaa.gov>.

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

Dated: December 21, 2010.

**Samuel D. Rauch III,**

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

[FR Doc. 2010-32656 Filed 12-27-10; 8:45 am]

**BILLING CODE 3510-22-P**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 648

[Docket No. 101116568-0608-01]

RIN 0648-BA42

#### Magnuson-Stevens Fishery Conservation and Management Act Provisions; Fisheries of the Northeastern United States; Tilefish Fishery

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

**ACTION:** Interim final rule, request for comments.

**SUMMARY:** NMFS issues this interim final rule to amend the cost recovery regulations implementing the Tilefish Fishery Management Plan (FMP) to require the first year cost-recovery fee percentage to be calculated based on the best estimate of the actual costs associated with the management, data collection and analysis, and enforcement of the individual fishing quota (IFQ) allocation program (not to exceed 3 percent), rather than to be set at the statutory maximum 3 percent of the ex-vessel value of tilefish landings.

**DATES:** This rule is effective December 28, 2010. Written comments must be received no later than 5 p.m. eastern standard time, on January 27, 2011.

**ADDRESSES:** This document and other supporting material are available online at <http://www.regulations.gov> or <http://www.nero.nmfs.gov>. You may submit comments, identified by RIN number 0648-BA42, by any of the following methods:

- **Electronic Submissions:** Submit all electronic public comments via the Federal e-Rulemaking portal <http://www.regulations.gov>.

- **Fax:** (978) 281-9135, Attn: Christopher Biegel.

- **Mail:** Patricia A. Kurkul, Regional Administrator, NMFS, Northeast Regional Office, 55 Great Republic Drive, Gloucester, MA 01930. Mark the outside of the envelope: "Comments on Tilefish Cost-Recovery Regulatory Amendment."

**Instructions:** All comments received are 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. Attachments to electronic comments will be accepted via Microsoft Word, Microsoft Excel, WordPerfect, or Adobe PDF file formats only.

#### **FOR FURTHER INFORMATION CONTACT:**

Christopher Biegel, Fishery Management Specialist, phone (978) 281-9112.

#### **SUPPLEMENTARY INFORMATION:**

##### **Background**

Limited access privilege programs (LAPPs) are a management tool authorized under section 303A of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) that allow a permit holder exclusive harvest of a portion of the total allowable catch of a fishery, but does not confer any right or title to any fish before the fish is harvested by the holder. An IFQ is a form of LAPP where the harvest permit is issued to an individual. Cost-recovery for LAPPs is mandated by section 304(d)(2) of the Magnuson-Stevens Act, which states that "the Secretary \* \* \* shall collect a fee to recover the actual costs directly related to the management, data collection, and enforcement of any limited access privilege program."

The tilefish fishery is managed by the Mid-Atlantic Fishery Management Council (Council) through the Tilefish FMP. The final rule implementing Amendment 1 to the FMP (74 FR 42580, August 24, 2009) established an IFQ program which included the required cost-recovery provisions.

Fees are collected to recover the costs associated with management, data