

**Fire Suppression and Liability (May 2014)**

(a) *Contractor's Responsibility for Fire Fighting.* The Contractor, under the provisions of FAR clause 52.236-9, *Protection of Existing Vegetation, Structures, Equipment, Utilities, and Improvements*, shall immediately extinguish all fires on the work site other than those fires in use as a part of the work. The Contractor may be held liable for all damages and for all costs incurred by the Government for labor, subsistence, equipment, supplies, and transportation deemed necessary to control or suppress a fire set or caused by the Contractor or the Contractor's agents or employees subject to the following fire classifications:

(b) *Fire Suppression Costs.* The Contractor's obligations for cost of fire suppression vary according to three classifications of fires as follows:

(1) *Operations Fire.* An "operations fire" is a fire caused by the Contractor's operations other than a negligent fire. The Contractor agrees to reimburse Forest Service for such cost for each operations fire, subject to a maximum of the dollar amount of \$ [Contracting Officer insert amount] \_\_\_\_\_. The cost of the Contractor's actions, supplies, and equipment on any such fire, or otherwise provided at the request of Forest Service, shall be credited toward such maximum. If the Contractor's actual cost exceeds contractor's obligation stated above, Forest Service shall reimburse the contractor for the excess.

(2) *Negligent Fire.* A "negligent fire" is a fire caused by the negligence or fault of the Contractor's operations including, but not limited to, one caused by smoking by persons engaged in the Contractor's operations during the course of their employment, or during rest or lunch periods; or if the Contractor's failure to comply with requirements under this contract results in a fire starting, or permits a fire to spread. Damages and the cost of suppressing negligent fires shall be borne by the Contractor.

(3) *Other Fires on Contract Area.* Forest Service shall pay the Contractor, at firefighting rates common in the area or at prior agreed rates, for equipment or personnel furnished by the Contractor at the request of Forest Service, on any fire on contract area other than an operations fire or a negligent fire.

(c) *Contractor's Responsibility for Notification in Case of Fire.* The Contractor shall immediately notify the Government of any fires sighted on or in the vicinity of the work site.

(d) *Contractor's Responsibility for Responding to Emergencies.* When directed by the Contracting Officer, the Contractor shall temporarily redirect employees and equipment from the work site for emergency work (anticipated to be restricted to firefighting). This is considered to be within the general scope of the contract. An equitable adjustment for any such redirection of employees and equipment will be made under the CHANGES clause, FAR 52.243-4.

(e) *Performance by the Contractor.* Where the Contractor's employees, agents, contractors, subcontractors, or their employees or agents perform the Contractor's

operations in connection with fire responsibilities, the Contractor's obligations shall be the same as if performance was by Contractor.

(f) *State Law.* The Contractor shall not be relieved by the terms of this contract of any liability to the United States for fire suppression costs recovered in an action based on State law, except for such costs resulting from operations fires. Amounts due to the Contractor for firefighting expenditures on operations fires shall not be withheld pending settlement of any such claim or action based on State law.

(End of Clause)

Dated: May 15, 2014.

**Lisa M. Wilusz,**

*Director, Office of Procurement and Property Management.*

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

[Docket No. 140117052-4402-02]

RIN 0648-XD094

**Fisheries of the Northeastern United States; Summer Flounder, Scup, and Black Sea Bass Fisheries; 2014 Summer Flounder Specifications; 2015 Summer Flounder, Scup, and Black Sea Bass Specifications**

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

**ACTION:** Final rule.

**SUMMARY:** NMFS issues final specifications for the 2014 summer flounder fishery, and the 2015 summer flounder, scup, and black sea bass fisheries. This final rule specifies allowed harvest limits for both commercial and recreational fisheries. This action prohibits federally permitted commercial fishing vessels from landing summer flounder in Delaware in 2014 due to continued quota repayment from previous years' overages. These actions are necessary to comply with regulations implementing the Summer Flounder, Scup, and Black Sea Bass Fishery Management Plan, and to ensure compliance with the Magnuson-Stevens Fishery Conservation and Management 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 2014 and 2015.

**DATES:** Effective May 22, 2014, through December 31, 2015.

**ADDRESSES:** Copies of the specifications document, consisting of an 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 John K. Bullard, Regional Administrator, Greater Atlantic Region, National Marine Fisheries Service, 55 Great Republic Drive, Gloucester, MA 01930-2298.

**FOR FURTHER INFORMATION CONTACT:** Moira Kelly, Fishery Policy Analyst, (978) 281-9218.

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

The Mid-Atlantic Fishery Management Council (Council) and the Atlantic States Marine Fisheries Commission (Commission) cooperatively manage the summer flounder, scup, and black sea bass fisheries under the Summer Flounder, Scup, and Black Sea Bass Fishery Management Plan (FMP). Fishery specifications in these fisheries include various catch and landing subdivisions, such as the commercial and recreational sector annual catch limits (ACLs), annual catch targets (ACTs), sector-specific landing limits (i.e., the commercial fishery quota and recreational harvest limit (RHL)), and research set-aside (RSA) established for the upcoming fishing year. Details of each subdivision appear later in this rule.

The FMP and its implementing regulations establish the Council's process for establishing specifications. All requirements of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), including the 10 national standards, also apply to specifications.

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, 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. Detailed background information regarding the status of the summer flounder, scup, and black sea bass stocks and the development of the 2014 and 2015 specifications for these fisheries was provided in the proposed specifications (March 31, 2014; 79 FR 17995). That information is not repeated here.

NMFS will establish the 2014 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.

*2014 and 2015 Specifications*

This action specifies the allowed harvest limits for the commercial and recreational fisheries for the 2014 summer flounder fishery, and the 2015 summer flounder, scup, and black sea bass fisheries. Specifications for all three species for fishing year 2014 were implemented in 2012 (December 31,

2012; 77 FR 76942). This rule modifies the 2014 summer flounder specifications based on an updated stock assessment conducted by the NMFS Northeast Fisheries Science Center (NEFSC) in July 2013, and establishes the 2015 summer flounder specifications. This rule also establishes the 2015 scup and black sea bass specifications. This rule makes no changes to the 2014 scup specifications, previously established in 2012, and the 2014 black sea bass specifications, last revised in 2013 (June 21, 2013; 78 FR 37475). This action will establish the following specifications:

TABLE 1—SUMMARY OF THE PROPOSED 2014–2015 SUMMER FLOUNDER SPECIFICATIONS AND 2015 SCUP AND BLACK SEA BASS SPECIFICATIONS

		Summer flounder		Scup	Black sea bass
		2014	2015	2015	2015
ABC .....	million lb .....	21.94	22.77	33.77	5.50
	mt .....	9,950	10,329	15,320	2,494
Commercial ACL .....	million lb .....	12.87	13.34	26.34	2.60
	mt .....	5,837	6,049	11,950	1,180
Recreational ACL .....	million lb .....	9.07	9.44	7.43	2.90
	mt .....	4,113	4,280	3,370	1,314
Commercial ACT .....	million lb .....	12.87	13.34	26.34	2.60
	mt .....	5,837	6,049	11,950	1,180
Recreational ACT .....	million lb .....	9.07	9.44	7.43	2.90
	mt .....	4,113	4,280	3,370	1,314
Commercial Quota .....	million lb .....	10.51	10.77	20.60	2.17
	mt .....	4,767	4,870	9,343	986
RHL .....	million lb .....	7.01	7.16	6.60	2.26
	mt .....	3,179	3,247	2,991	1,026

**Note:** Commercial Quotas and RHLs include the 3-percent RSA reduction.

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

**Summer Flounder**

The summer flounder stock was declared rebuilt in 2011. The new (2013) stock assessment utilized to derive specification recommendations indicates that summer flounder were not overfished and that overfishing did not occur in 2012, the most recent year of available data.

The overfishing limit (OFL) for 2014 was estimated to be 26.76 million lb (12,138 mt). Based on this information, the 2014 ABC for summer flounder is 23.94 million lb (9,950 mt). The OFL for 2015 is projected to be 27.06 million lb (12,275 mt), and the 2015 ABC for summer flounder is 22.77 million lb

(10,329 mt). Consistent with the summer flounder regulations, the sum of the recreational and commercial sector ACLs is equal to the ABC. ACL is an expression of total catch (i.e., landings and dead discarded fish). To derive the ACLs, the sum of the sector-specific estimated discards is removed from the ABC to derive the landing allowance. The resulting landing allowance is apportioned to the commercial and recreational sectors by applying the FMP allocation criteria: 60 percent to the commercial fishery and 40 percent to the recreational fishery. Using this method ensures that each sector is accountable for its respective discards, rather than simply apportioning the ABC by the allocation percentages to derive the sector ACLs.

Although the derived ACLs are not split exactly 60/40, the landing portions of the ACLs preserve the 60/40 allocation split, consistent with the FMP. This process results in a commercial ACL of 12.89 million lb (5,837 mt) for 2014, and 13.34 million lb (6,049 mt) for 2015. The recreational ACLs are 9.07 million lb (4,113 mt) for 2014 and 9.44 million lb (4,280 mt) for 2015. The ACTs (both commercial and recreational) are equal to their respective ACL for both 2014 and 2015. Removing the estimated discards and 3 percent of the TAL for RSA, the commercial summer flounder quotas are 10.51 million lb (4,767 mt) for 2014 and 10.74 million lb (4,870 mt) for 2015. The RHLs are 7.01 million lb (3,179 mt) for 2014 and 7.16 million lb (3,247 mt) for 2015.

TABLE 2—SUMMER FLOUNDER SPECIFICATIONS

Year		ABC	Commercial ACL	Recreational ACL	Comm. ACT	Rec. ACT	Comm. quota (minus 3% RSA)	RHL (minus 3% RSA)
2014 (Current) .....	million lb .....	22.40	12.05	10.19	12.05	10.19	11.39	7.60
	mt .....	10,088	5,467	4,621	5,467	4,621	5,166	3,444

TABLE 2—SUMMER FLOUNDER SPECIFICATIONS—Continued

Year		ABC	Commercial ACL	Recreational ACL	Comm. ACT	Rec. ACT	Comm. quota (minus 3% RSA)	RHL (minus 3% RSA)
2014 (Proposed)	million lb	21.94	12.87	9.07	12.87	9.07	10.51	7.01
	mt	9,950	5,837	4,113	5,837	4,113	4,767	3,179
2015 (Proposed)	million lb	22.77	13.34	9.44	13.34	9.44	10.77	7.16
	mt	10,329	6,049	4,280	6,049	4,280	4,870	3,247

Note: Commercial Quotas and RHLs include the 3-percent RSA reduction.

Table 3 presents the final allocations for 2014, by state, with the commercial portion of the RSA deduction. In December 2013, NMFS published a document (78 FR 78786) indicating what, if any, adjustments would be required to the state commercial summer flounder quotas as a result of commercial sector overages. Those overages have been applied to the new specifications for fishing year 2014 as

well, and are presented in Table 3. Any commercial quota adjustments to account for overages will be published prior to the start of the 2015 fishing year. As described in the document, consistent with the quota-setting procedures for the FMP, summer flounder overages are determined based upon landings for the period January-October 2013, plus any previously unaccounted for overages. Table 3

summarizes, for each state, the commercial summer flounder percent shares as outlined in § 648.102 (c)(1)(i), the resultant 2014 commercial quotas (both initial and after deducting the RSA), the quota overages as described above, and the final adjusted 2014 commercial quotas, after deducting the RSA.

TABLE 3—FINAL STATE-BY-STATE COMMERCIAL SUMMER FLOUNDER ALLOCATIONS FOR 2014

State	FMP percent share	2014 Initial quota		2014 Initial quota, less RSA		Quota overages (through 10/31/13)		Adjusted 2014 quota, less RSA and overages	
		lb	kg	lb	kg	lb	kg	lb	kg
ME	0.04756	5,153	2,338	4,998	227	0	0	4,998	2,267
NH	0.00046	50	23	48	2	0	0	48	22
MA	6.82046	739,046	335,226	716,792	32,513	28,199	12,791	688,593	312,340
RI	15.68298	1,699,364	770,818	1,648,193	74,761	0	0	1,648,193	747,608
CT	2.25708	244,571	110,935	237,206	10,760	0	0	237,206	107,595
NY	7.64699	828,606	375,850	803,656	36,453	79,355	35,995	724,301	328,537
NJ	16.72499	1,812,273	822,033	1,757,702	79,728	0	0	1,757,702	797,280
DE	0.01779	1,928	874	1,870	85	52,384	23,760	0	0
MD	2.0391	220,951	100,222	214,298	9,720	0	0	214,298	97,204
VA	21.31676	2,309,824	1,047,719	2,240,271	101,617	0	0	2,240,271	1,016,170
NC	27.44584	2,973,954	1,348,963	2,884,403	130,834	0	0	2,884,403	1,308,343
Total	100	10,835,720	4,915,000	10,509,436	476,700	155,376	70,476	10,354,060	4,696,523

Notes: 2013 quota overage is determined by comparing landings for January through October 2013, plus any landings in 2012 in excess of the 2012 quota (that were not previously addressed in the 2013 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 2014 allocation of zero (0). Kilograms are as converted from pounds and may not necessarily add due to rounding.

Table 4 presents the initial allocations of summer flounder for 2015, by state, with and without the commercial portion of the RSA deduction. These state quota allocations for 2015 are

preliminary and are subject to change if there are overages of states' quotas carried over from a previous fishing year, as well as any adjustments needed after the 2015 RSA projects are awarded.

The final commercial quota allocations will be announced in a **Federal Register** document prior to the start of the 2015 fishing year.

TABLE 4—2015 PRELIMINARY SUMMER FLOUNDER STATE COMMERCIAL QUOTAS

State	FMP percent share	Initial quota (TAL)		Initial quota (TAL) less RSA <sup>1</sup>	
		lb	kg <sup>2</sup>	lb	kg <sup>2</sup>
ME	0.04756	5,265	2,388	5,106	2,316
NH	0.00046	51	23	49	22
MA	6.82046	754,985	342,461	732,280	332,156
RI	15.68298	1,736,013	787,456	1,683,805	763,761
CT	2.25708	249,845	113,330	242,332	109,920
NY	7.64699	846,477	383,962	821,020	372,408
NJ	16.72499	1,851,358	839,776	1,795,681	814,507
DE	0.01779	1,969	893	1,910	866
MD	2.0391	225,716	102,385	218,928	99,304
VA	21.31676	2,359,640	1,070,333	2,288,676	1,038,126

TABLE 4—2015 PRELIMINARY SUMMER FLOUNDER STATE COMMERCIAL QUOTAS—Continued

State	FMP percent share	Initial quota (TAL)		Initial quota (TAL) less RSA <sup>1</sup>	
		lb	kg <sup>2</sup>	lb	kg <sup>2</sup>
NC .....	27.44584	3,038,093	1,378,079	2,946,726	1,336,612
Total <sup>3</sup> .....	100	11,069,410	5,021,085	10,736,512	4,870,000

<sup>1</sup> Preliminary Research Set-Aside amount is 587,100 lb (266 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.

**Delaware Summer Flounder Closure**

Table 3 shows that, for Delaware, the amount of overharvest from previous years is greater than the amount of commercial quota allocated to Delaware for 2014. As a result, there is no quota available for 2014 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, Greater Atlantic Region, NMFS, has determined no longer has commercial quota available for harvest. Therefore, landings of summer flounder in Delaware by vessels holding commercial Federal summer flounder permits are prohibited for the 2014 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 2014 calendar year, unless additional quota becomes available through a transfer, as mentioned above.

**Scup**

Using the appropriate control rule and applying the Council’s risk policy, the ABC for scup is 33.77 million lb (15,320 mt) for fishing year 2015. The stock assessment review upon which the specifications are based indicates that scup biomass is currently lower than in recent years. Therefore, the catch limits are lower than those for fishing year 2014, but are still relatively high compared to recent landings.

The scup management measures specify that the ABC is equal to the sum of the commercial and recreational sector ACLs. It was recommended that the ACTs (both commercial and recreational) should be set equal to the respective ACLs for fishing year 2015. Therefore, the 2015 commercial sector ACL/ACT is 26.35 million lb (11,950 mt) and the 2015 recreational sector ACL/ACT is 7.43 million lb (3,370 mt). After 840,990 lb (381 mt) of RSA and discards (commercial: 5.11 million lb (2,321 mt); recreational: 630,000 lb (285 mt)) are removed, the 2015 commercial quota is 20.60 million lb (9,343 mt) and

the 2015 recreational harvest limit is 6.60 million lb (2,991 mt).

TABLE 5—2015 SCUP SPECIFICATIONS

	million lb	mt
ABC .....	33.77	15,320
Commercial ACL .....	26.35	11,950
Recreational ACL .....	7.43	3,370
Commercial ACT .....	26.35	11,950
Recreational ACT .....	7.43	3,370
Commercial Quota .....	20.60	9,343
RHL .....	6.60	2,991

**Note:** Commercial Quotas and RHLs include the 3-percent RSA reduction.

The scup commercial quota is divided into three commercial fishery quota periods. If there is a commercial overage applicable to the 2015 scup commercial quota, a document will be published prior to the start of the 2015 fishing year. The period quotas, after deducting for RSA, are detailed in Table 6. Unused Winter I quota may be carried over for use in the Winter II period. The Winter I possession limit will drop to 1,000 lb (454 kg) upon attainment of 80 percent of that period’s allocation.

TABLE 6—COMMERCIAL SCUP QUOTA ALLOCATIONS FOR 2015 BY QUOTA PERIOD

Quota period	Percent share	Initial quota		Initial quota less overages (through 10/31/2013)		Adjusted quota less overages and RSA	
		lb	mt	lb	mt	lb	mt
Summer .....	38.95	8,270,083	3,751	N/A .....	N/A .....	8,021,980	3,639
Winter II .....	15.94	3,384,470	1,535	N/A .....	N/A .....	3,282,936	1,489
Total .....	100.0	21,232,561	9,631	N/A .....	N/A .....	20,595,585	9,342

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

An increase in the Winter II commercial scup possession limit from 2,000 lb (907 kg) to 12,000 lb (5,443 kg) is also being implemented in this action. Because the commercial fishery has under-harvested the scup quota in recent years, this increase in the possession limit is expected to increase

efficiency in the scup fishery. The quota period possession limits are shown in Table 7. The increase in the Winter II possession limit does not impact the potential additional increase as a result of a quota transfer from Winter I. If the Winter I quota is not fully harvested, the remaining quota is transferred to Winter

II. 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**. The regulations specify that the Winter II possession limit increases consistent with the increase in the quota, as described in Table 8.

TABLE 7—COMMERCIAL SCUP POSSESSION LIMITS BY QUOTA PERIOD

Quota period	Percent share	Federal possession limits (per trip)	
		lb	kg
Winter I .....	45.11	50,000	22,680
Summer .....	38.95	N/A	N/A
Winter II .....	15.94	12,000	5,443
Total .....	100.0	N/A	N/A

TABLE 8—POTENTIAL INCREASE IN 2014 WINTER II POSSESSION LIMITS BASED ON THE AMOUNT OF SCUP ROLLED OVER FROM WINTER I TO WINTER II

Initial Winter II possession limit		Rollover from Winter I to Winter II		Increase in initial Winter II possession limit		Final Winter II possession limit after rollover from Winter I to Winter II	
lb	kg	lb	kg	lb	kg	lb	kg
12,000	5,443	0–499,999	0–226,796	0	0	12,000	5,443
12,000	5,443	500,000–999,999	226,796–453,592	1,500	680	13,500	6,123
12,000	5,443	1,000,000–1,499,999	453,592–680,388	3,000	1,361	15,000	6,804
12,000	5,443	1,500,000–1,999,999	680,389–907,184	4,500	2,041	16,500	7,484
12,000	5,443	2,000,000–2,500,000	907,185–1,133,981	6,000	2,722	18,000	8,165

**Black Sea Bass**

The 2015 black sea bass ABC is 5.50 million lb (2,494 mt), equal to the 2013 and 2014 fishing years' ABC. The

fishing year 2015 commercial ACL and ACT are 2.60 million lb (1,180 mt), the recreational ACL and ACT are 2.90 million lb (1,314 mt), the commercial

quota is 2.17 million lb (986 mt), and the RHL is 2.26 million lb (1,026 mt). The quotas include reductions for RSA (3 percent) and discards.

TABLE 9—BLACK SEA BASS 2015 SPECIFICATIONS

	million lb	mt
ABC .....	5.50	2,494
Commercial ACL .....	2.60	1,180
Recreational ACL .....	2.90	1,314
Commercial ACT .....	2.60	1,180
Recreational ACT .....	2.90	1,314
Commercial Quota .....	2.17	986
RHL .....	2.26	1,026

**Comments and Responses**

On March 31, 2014, NMFS published proposed specifications for public notice and comment. NMFS received one letter containing comments on three issues. The one commenter suggested that the quotas should be reduced by 50 percent, that exempted fishing permits (discussed under the RSA sections) were unnecessary, and that the scup possession limit should not be increased.

NMFS disagrees with each of those statements. The quotas established through this final rule were based on the best available science, as recommended by the Council's SSC. Thus, NMFS did not take the suggestion to reduce the quotas by 50%. The RSA program continues to provide a mechanism to fund research and compensate vessel owners through the sale of fish harvested under the research quota.

This program provides valuable scientific information and fosters cooperative research throughout the region. Further, the scup quota has not been fully harvested in several years and the Council has concluded that a Winter II possession limit closer to the Winter I possession limit of 20,000 lb would allow the industry to fish more efficiently. Thus, for this reason, NMFS did not implement the suggestion that the scup possession limit should not be increased.

**Classification**

The Administrator, Greater Atlantic 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.

These specifications are exempt from the procedures of Executive Order 12866.

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//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 Small Business Administration defines a small business in the commercial harvesting sector as a firm with receipts (gross revenues) of up to \$5.0 and \$19.0 million for shellfish and for finfish business, respectively. A small business in the recreational fishery is a firm with receipts of up to \$7.0 million. 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 2014–2015 specifications could affect 986 entities that are small and 6 that are large, assuming average revenues for the 2010–2013 period. The majority of the permitted vessels readily fall within the definition of small business. Estimates of costs associated with this rule are discussed further below.

### *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 2014 and 2015, this final rule implements one such measure: Increasing the scup Winter II possession limit. Therefore, the economic impact analysis of the action is evaluated on the different levels of quota specified in the alternatives and the increase in the possession limit. While the overall scup catch limits have been decreasing slightly, the scup quota has been significantly under-harvested in recent years. As a result, the increase in the scup possession limit is intended to offset the quota decrease by allowing the fleet to fish more efficiently. 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 2014–2015 ABC level for all three stocks. NMFS considers these recommendations to be consistent with National Standard 2. Establishing catch levels higher than the SSC ABC recommendations is not permitted under the Magnuson-Stevens Act.

The economic analysis for the 2014–2015 specifications assessed the impacts for quota alternatives that achieve the aforementioned objectives. The Council analyzed three sets of combined catch limit alternatives for the 2014–2015 summer flounder, scup, and black sea bass fisheries, even though the 2014 scup and black sea bass catch limits are not being considered for modification. Of these, one alternative, labeled Alternative 3 for each species, contained the most restrictive options (i.e., lowest total landing levels) for each fishery: Commercial quotas of 9.18 million lb (4,164 mt) for summer flounder, 10.68 million lb (4,844 mt) for scup, and 1.09 million lb (494 mt) for black sea bass; and recreational harvest limits of 6.12 million lb (2,776 mt) for summer flounder, 3.01 million lb (1,365 mt) for scup, and 1.14 million lb (517 mt) for black sea bass. The catch limits associated with Alternative 3 pre-date the ABC framework, thus the information for this alternative is presented in terms of landing levels. Please see the EA for a detailed

discussion on this alternative. While the Alternative 3 measures would achieve the objectives of the proposed action for each of three species, they have the highest potential adverse economic impacts on small entities in the form of potential foregone fishing opportunities. Alternative 3 was not preferred by the Council because the other alternatives considered are expected have lower adverse impacts on small entities while achieving the stated objectives of sustaining the summer flounder, scup, and black sea bass stocks, consistent with the FMP and Magnuson-Stevens Act.

Another alternative, Alternative 2 (status quo), would maintain the current 2014 ABC for summer flounder of 22.24 million lb (10,088 mt). Alternative 2 (status quo) would implement the following ABCs in 2015: Summer flounder, 22.24 million lb (10,088 mt); scup, 35.99 million lb (16,325 mt); and black sea bass, 5.5 million lb (2,494 mt). This alternative is not consistent with the goals and objectives of the FMP and the Magnuson-Stevens Act. The status quo alternative would result in fishing limits for the 2014 summer flounder fishery and for the 2015 summer flounder and scup fisheries which are higher than the recommended levels. This could result in overfishing of the resources and substantially compromise the mortality and/or stock rebuilding objectives for each species, contrary to laws and regulations.

Likewise, a "true" no action alternative, wherein no quotas are adjusted for 2014 or established for 2015, 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 2014 or 2015 would substantially complicate the approved management programs for these three species. NMFS is required under the FMP's implementing regulations to implement specifications for these fisheries on an annual basis, and for up to 3 years. The no action alternative would result in no fishing limits for 2015 and would maintain a fishing limit for the 2014 summer flounder fishery which is higher than the recommended level. This could result in overfishing of the resources and substantially compromise the mortality and/or stock rebuilding objectives for each species, contrary to laws and regulations.

Through this final rule, NMFS implements Alternative 1 (the Council's preferred alternative). Under this alternative, NMFS would implement the ABCs in 2014 for summer flounder (21.94 million lb (9,950 mt)). This final

rule also implements the following ABCs for 2015: Summer flounder, 22.77 million lb (10,329 mt); scup, 33.77 million lb (15,320 mt); and black sea bass, 5.5 million lb (2,494 mt). This alternative consists of the quota levels that pair the lowest economic impacts to small entities and meet the required objectives of the FMP and the Magnuson-Stevens Act. The respective specifications contained in this final rule for all three species were selected because they satisfy NMFS' 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 catch limits for all three species all have very low likelihoods of causing overfishing to occur in 2014 or 2015.

The revenue decreases associated with allocating a portion of available catch to the RSA program are expected to be minimal (approximately between \$300 and \$1,000 per vessel), 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 2014 and 2015.

#### *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: May 15, 2014.

**Samuel D. Rauch III,**  
*Deputy Assistant Administrator for  
Regulatory Programs, National Marine  
Fisheries Service.*

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 660

**RIN 0648-BD57**

[Docket No. 130802674-4422-02]

#### Fisheries Off West Coast States; Highly Migratory Fisheries; California Drift Gillnet Fishery; Sperm Whale Interaction Restrictions

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

**ACTION:** Temporary rule.

**SUMMARY:** Pursuant to its emergency authority, NMFS renews an emergency action that implemented, among other measures, mandatory monitoring (VMS) and observer requirements (pre-trip notification and a 100% deep water closure zone unless a NMFS-certified observer was on board) in the California thresher shark/swordfish drift gillnet (mesh size  $\geq 14$  inches) (DGN) fishery during the August 15, 2013 to January 31, 2014 fishing season, and would have immediately shut down the fishery for the calendar year in the event of a sperm whale interaction in the DGN fishery. This renewing action is necessary to ensure that the conservation measures continue to provide protection for sperm whales until permanent measures are in place. Specifically, per recommendations of the Pacific Offshore Cetacean Take Reduction Team, NMFS is currently developing a rule under authority of the Marine Mammal Protection Act (MMPA) in order to adequately monitor the DGN fishery and reduce the risk of sperm whale interactions.

**DATES:** This rule is effective from May 22, 2014, through August 5, 2014. Comments must be received on or before June 23, 2014.

**ADDRESSES:** Requests for copies of documents supporting the temporary rule may be obtained from the West Coast Regional Office, NMFS, 501 W. Ocean Blvd., Ste. 4200, Long Beach, CA 90802.

You may submit comments on the temporary rule, identified by NOAA-NMFS-2013-0131, by any of the following methods:

- **Electronic Submission:** Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to [www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2013-0131](http://www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2013-0131), click the "Comment Now!" icon, complete the required fields, and enter or attach your comments.

- **Fax:** 562-980-4047; Attention: Craig Heberer.

- **Mail:** Craig Heberer, Southwest Regional Office, NMFS, 501 W. Ocean Blvd., Ste. 4200, Long Beach, CA 90802.

**Instructions:** Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered by NMFS. All comments received are a part of the public record and will generally be posted for public viewing on [www.regulations.gov](http://www.regulations.gov) without change. All personal identifying information (e.g., name, address, etc.), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NMFS will accept anonymous comments (enter "N/A" in the required fields if you wish to remain anonymous). Attachments to electronic comments will be accepted in Microsoft Word, Excel, or Adobe PDF file formats only.

Requests for copies of documents supporting this rule may be obtained from the West Coast Regional Office, NMFS, 501 W. Ocean Blvd., Ste. 4200, Long Beach, CA 90802

**FOR FURTHER INFORMATION CONTACT:** Craig Heberer, telephone: 706-431-9440 (#303), fax: 562-980-4047, email: [craig.heberer@noaa.gov](mailto:craig.heberer@noaa.gov).

**SUPPLEMENTARY INFORMATION:** The DGN fishery is managed under the Federal Fishery Management Plan for U.S. West Coast Fisheries for Highly Migratory Species (HMS FMP). The HMS FMP was prepared by the Pacific Fishery Management Council (Council) and is implemented under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (MSA) by regulations at 50 CFR part 660.

#### Background

On September 4, 2013, NMFS published in the **Federal Register** a temporary rule (78 FR 54548) for emergency action to modify the California swordfish/thresher shark DGN fishery for the 2013-2014 fishing season under authority of section 305(c)(1) of the MSA. The purpose of