

manufacturer, estimated average start-up costs ranged from \$15,000 to \$142,500, and estimated average annual compliance costs ranged from \$15,244 to \$132,000.

In a separate effort to obtain cost information, ODI contacted a business that provides consultation services and computer software that is designed to assist vehicle and equipment manufacturers in preparing for and complying with the EWR regulation. As discussed above, this company advised ODI that its fee for these services would vary, depending on the amount and complexity of reporting to be performed by the manufacturer.

For the reasons stated above, including the matters discussed in Section II.4 of this notice, and based on the best information available to the agency at this time, I certify that maintaining the existing 500-vehicle threshold for comprehensive early warning reporting will not have a significant economic impact on a substantial number of small entities.

*Executive Order 13132 (Federalism).* We previously considered Executive Order 13132 in the Final Rule. 67 FR 45871 (July 10, 2002). We incorporate our previous statements by reference.

*Civil Justice Reform.* This notice makes no changes to the current early warning reporting regulation, nor will it have a retroactive or preemptive effect, and judicial review of it may be obtained pursuant to 5 U.S.C. 702. That section does not require that a petition for reconsideration be filed prior to seeking judicial review.

*Paperwork Reduction Act.* We received Paperwork Reduction Act clearance from OMB on December 20, 2002, which will expire on December 31, 2005. The clearance number is 2127-0616. This notice does not make any substantive amendments to the Final Rule, so the overall paperwork burden is not changed.

*Data Quality Act.* We previously considered the Data Quality Act in the Final Rule. 67 FR 45871-45872 (July 10, 2002). We incorporate our previous statements by reference.

*Unfunded Mandates Reform Act.* We previously considered the Unfunded Mandates Reform Act in the Final Rule. 67 FR 49263-49264 (July 30, 2002). We incorporate our previous statements by reference.

Issued on: January 16, 2004.

**Jeffrey W. Runge,**  
Administrator.

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

[Docket No. 040113012-4012-01; I.D. 121903D]

RIN 0648-AR62

#### 50 CFR Part 648

#### Fisheries of the Northeastern United States; Summer Flounder, Scup, and Black Sea Bass Fisheries; Framework Adjustment 4

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

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

**SUMMARY:** NMFS proposes measures contained in Framework Adjustment 4 (Framework 4) to the Summer Flounder, Scup, and Black Sea Bass Fishery Management Plan (FMP) that would allow for the transfer at sea of scup between commercial fishing vessels, and clarify the circumstances under which a vessel must operate with the specified mesh. Regulations regarding the establishment and administration of research set-aside (RSA) quota would also be amended to clarify how unused RSA quota is to be returned to the fishery.

**DATES:** Comments on this proposed rule must be received by February 9, 2004.

**ADDRESSES:** Copies of the Framework 4 document, its Regulatory Impact Review (RIR), the Initial Regulatory Flexibility Analysis (IRFA), the Environmental Assessment (EA), and other supporting documents for the framework adjustment are available from Daniel Furlong, Executive Director, Mid-Atlantic Fishery Management Council, Room 2115, Federal Building, 300 South Street, Dover, DE 19901-6790. The EA/RIR/IRFA is also accessible via the Internet at <http://www.nero.nmfs.gov>. Written comments on the proposed rule should be sent to Patricia A. Kurkul, Regional Administrator, NMFS, Northeast Regional Office, One Blackburn Drive, Gloucester, MA 01930. Mark the outside of the envelope "Comments on Framework 4 (Scup)." Comments may also be sent via facsimile (fax) to (978) 281-9135. Comments will not be accepted if submitted via e-mail or the Internet.

**FOR FURTHER INFORMATION CONTACT:** Paul Perra, Fishery Policy Analyst, (978) 281-9153, fax (978) 281-9135, e-mail [paul.perra@noaa.gov](mailto:paul.perra@noaa.gov).

**SUPPLEMENTARY INFORMATION:**

## Background

The summer flounder, scup, and black sea bass fisheries are managed cooperatively by the Atlantic States Marine Fisheries Commission (Commission) and the Mid-Atlantic Fishery Management Council (Council), in consultation with the New England and South Atlantic Fishery Management Councils. The management unit for scup (*Stenotomus chrysops*), specified in the FMP, is defined as 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 FMP and its implementing regulations at 50 CFR part 648, subparts A (general provisions), and H (scup) describe the process for specifying commercial scup measures that apply in the Exclusive Economic Zone (EEZ). The states manage these fisheries within 3 nautical miles of their coasts, under the Commission's Interstate Summer Flounder, Scup, and Black Sea Bass Fishery Management Plan. The Federal regulations govern vessels fishing in the EEZ, as well as vessels possessing a Federal fisheries permit, regardless of where they fish.

The Council initiated Framework 4, pursuant to § 648.127(a), to reduce regulatory discards of scup that can occur when vessels catch large amounts of scup, which would exceed their trip limits, and must discard them. The majority of these discarded scup would die, and thus be counted as fishing mortality, rather than landings that would be counted under the quota. Framework 4 would allow the commercial scup fishery to be more efficient and to better achieve the management objectives of the FMP, specifically regarding attainment of optimum yield from the scup fishery.

The commercial scup fishery is managed under a system that allocates the annual quota to three periods: Winter I, January-April (45.11 percent); Summer, May-October (38.95 percent); and Winter II, November-December (15.94 percent). During the Winter periods, the quota is monitored on a coastwide basis. During the Summer period, the quota is also monitored on a coastwide basis, but the Commission uses a state-by-state allocation system to help manage the Federal quota. The Federal commercial scup fishery is closed coastwide when the allocation for a period is reached. In addition, any overages during a quota period are subtracted from that period's allocation for the following year. Any quota overages by a state during the Summer period (whether or not the total Summer period quota is exceeded) are subtracted

by the Commission from that state's Summer period share the following year. Also, the regulations allow for the rollover of unused quota from the Winter I period to the Winter II period within a fishing year (68 FR 62250, November 3, 2003). The final rule to implement the 2003 annual quota specifications (68 FR 60, January 2, 2003) established possession limits of 15,000 lb (6,804 kg) per trip during Winter I and 1,500 lb (680 kg) during Winter II, and specified that the Winter I possession limit be reduced to 1,000 lb (454 kg) per trip when 80 percent of the commercial quota allocated to that period is projected to be harvested.

Framework 4 proposes to allow the transfer at sea of scup between commercial fishing vessels, subject to certain requirements, to improve the enforceability of the transfers and to ensure that they are used to respond to occasional unanticipated catches, rather than targeted fishing. Any amount of scup less than the possession limit could be transferred between two vessels, given the following conditions: Transfers could only occur between vessels with Federal scup permits; transfers could only occur seaward of a boundary line that is roughly 20 nm from shore; the donating and receiving vessels must possess gear that meets the regulatory requirements at § 648.123(a)(2), (3), and (4) for commercial scup fishing gear; transfers could occur in the Winter I or Winter II periods only; only one transfer would be allowed per fishing trip for the donor vessel; after the donor vessel removes only enough scup to attain the scup possession limit, the transfer would include the entire codend; only scup and its normal bycatch could be transferred; only scup could be retained by the receiving vessel; while fishing for scup, all other nets must be stored below deck; and the donating and receiving vessels would report the transfer amount on the vessel trip report for each vessel.

Framework 4 was initiated to address discard issues, because otter trawl vessels targeting scup occasionally make very large hauls consisting almost entirely of scup, which can easily exceed the scup possession limit. Currently, when one of these large hauls occurs, most scup in the net are dead, and all scup in excess of the possession limit must be discarded. Under Framework 4, the contents of a large scup haul could be transferred to another federally permitted scup vessel under prescribed circumstances. This would convert regulatory discards of scup into landings, thus reducing bycatch and improving the efficiency of

the commercial scup fishery. Both the donor and receiver vessels could benefit financially. The donor vessel could benefit by selling fish that would otherwise be discarded, and the receiver vessel could benefit from obtaining fish while using less resources than under a typical fishing operation. It is possible that allowing the transfer of scup at sea could result in an earlier closure of the fishery because of higher scup retained catch rates. However, discard rates of scup are expected to be less during a scup fishery closure, because vessels would not be directing on scup. Thus, the proposed measures would serve to minimize bycatch and improve efficiency in fleet operations.

It is the Council's intention that the framework adjustment apply only to the scup otter trawl fishery, and that the transfer of scup at sea would occur only under safe weather and sea conditions, as determined by the participants in any such transfer.

NMFS proposes to implement the conditions on the transfer of scup at sea that the Council included in Framework 4, as summarized in this preamble. In addition, NMFS has defined a boundary beyond which transfers of scup may occur. This boundary is intended to improve enforceability of these regulations and to restrict transfers at sea to vessels already on the fishing grounds. The proposed boundary line begins at 40°50' N. lat., 70°00' W. long., and runs south to connect the points at 40°15' N. lat., 73°30' W. long.; 37°50' N. lat., 75°00' W. long.; and 35°30' N. lat., 75°00' W. long. Further, NMFS proposes to modify the Council's recommendations that the transfer include the entire codend, and that only scup and its normal bycatch could be transferred by requiring that the donor vessel may only remove enough scup from the net to attain the scup possession limit for the donor vessel, and that, after removal of scup from the net by the donor vessel, only the entire codend, with all its contents, could be transferred to the receiving vessel. This is intended to allow for retention of scup by the donor vessel up to its possession limit, and to improve at-sea enforcement of the proposed measures.

#### Need for Correction/Clarification

NMFS also proposes to clarify the circumstances under which a vessel must operate consistent with the specified mesh size restrictions for otter trawl vessels that possess scup. This proposed rule would modify current regulations to indicate that no owner or operator of an otter trawl vessel that is issued a scup moratorium permit may possess 500 lb (226.8 kg) or more of

scup from November 1 through April 30, or 100 lb (45.4 kg) or more of scup from May 1 through October 31, unless fishing with nets that have a minimum mesh size of 4.5-inch (11.4-cm) diamond mesh for no more than 25 continuous meshes forward of the terminus of the codend, and with at least 100 continuous meshes of 5.0-inch (12.7-cm) mesh forward of the 4.5-inch (11.4-cm) mesh, and all other nets are stored in accordance with § 648.23(b). For trawl nets with codends (including an extension) less than 125 meshes, the entire trawl net must have a minimum mesh size of 4.5 inches (11.4-cm) throughout the net. Scup on board these vessels would be required to be stored separately and kept readily available for inspection.

Also, current regulations state that unused RSA quota from disapproved RSA proposals may be reallocated to the respective commercial and recreational fisheries by the Regional Administrator, but the regulations are silent regarding the reallocation of RSA quota from approved but discontinued projects. Framework 1 to the FMP states that, in the event approved proposals do not make use of any or all of the set-aside quota for a particular species, the Regional Administrator would be authorized to restore the unutilized portion to its respective commercial and recreational fisheries. In order to clarify the circumstances under which the Regional Administrator shall reallocate unutilized RSA quota, NMFS proposes a change to the RSA provisions which appear in the Atlantic mackerel, squid, and butterfish regulations. Therefore, this proposed rule would modify current regulations to indicate that, if a RSA proposal is disapproved, or if the Regional Administrator determines that the allocated RSA quota cannot be utilized by a project, the Regional Administrator shall reallocate the unused amount of RSA quota to the respective commercial and recreational fisheries by notice in the **Federal Register**, provided that the reallocation of the unused amount of RSA quota is in accord with National Standard 1, and must be available for harvest before the end of the fishing year in which the initial RSA allocation was made. Any reallocation of unused RSA quota would be consistent with the proportional division of quota between the commercial and recreational fisheries in the relevant FMP, and allocated to the remaining quota periods for the fishing year, proportionally. The intent is to ensure that unused quota be returned to the fishery, if possible.

## Classification

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

An IRFA was prepared that describes the economic impact this proposed rule, if adopted, would have on small entities. A description of the reasons why this action is being considered, and the objectives of and legal basis for this action are contained at the beginning of this preamble. The preamble to this proposed rule also includes complete descriptions of the proposed and no action alternatives discussed here. There are no new recordkeeping or reporting requirements proposed in this rule. There are no relevant Federal rules that duplicate, overlap, or conflict with this proposed rule. All vessels that would be impacted by this proposed rulemaking are considered to be small entities; therefore, there would be no disproportionate impacts between large and small entities. A summary of the analysis follows:

The purpose of this framework is to reduce discards and improve efficiency in the scup fishery by allowing for the transfer at sea of scup between commercial fishing vessels, and clarifying the circumstances under which a vessel must operate with the specified mesh. Alternative 1 (No Action) would not affect the manner in which the commercial fishery operates or the quantity of scup landed in the commercial sector. The Preferred Alternative would allow for the transfer of scup at sea; both the donor and receiver vessels may benefit economically. The owner of the donor vessel may benefit by selling fish that would otherwise be discarded to the owner of the receiving vessel and the owner of the receiving vessel may benefit from acquiring fish obtained from fishing activity of another vessel, thus requiring less resources (e.g., less fuel and wear and tear on the net) than under a typical fishing operation. It is possible that allowing the transfer of scup at sea could result in the scup fishery being closed earlier because of higher retained catch rates. This would depend on the number of vessels that have large scup catches, and the opportunity to conduct transfers. If a scup period were to close sooner under the Preferred Alternative, the level of discards during a longer closure may not offset the saving of discards realized through the ability to transfer. However, scup discards are expected to be lower during a closure of the directed scup fishery, because vessels will not be directing on scup. Also, it is reasonable to expect that the ability to transfer scup

would be limited to a somewhat narrow window of time and would depend on the proximity of a nearby, permitted scup vessel, and how quickly that vessels could retrieve the codend of the donor vessel. Large catches of scup in the net die quickly and may sink to a point where they are irretrievable or, if held in the codend on board the donor vessel for too long, they spoil and become unmarketable. A longer closure may also have adverse economic impacts if affected fishermen do not have suitable alternative opportunities. However, since there are no data available to determine accurately how many vessels would participate in the transfer of scup at sea and how much scup would be transferred at sea under this alternative, the full impact of this alternative on early closures cannot be fully assessed.

The Council's recommendation on this action was predicated upon the need to make a decision to either allow at-sea transfers of scup to reduce regulatory discards (the preferred alternative), or to maintain the current prohibition on at-sea transfers (the no action alternative). Other alternatives to address the larger issues of regulatory discards and/or economic efficiency of the fleet were not considered to be within the scope of this action (which is a Framework Adjustment and therefore of limited scope). The Council did identify and discuss additional options to be part of the preferred alternative, but these were determined to be either unenforceable (e.g., allowing transfers of scup in excess of the possession limit to occur off the fishing grounds), cost prohibitive (e.g., requiring vessels to obtain a vessel monitoring system prior to participating), or not practicable (e.g., requiring participating vessels to contact NMFS personnel prior to conducting an at-sea transfer).

### List of Subjects in 50 CFR Part 648

Fishing, Fisheries, Reporting and recordkeeping requirements.

Dated: January 16, 2004.

**John Oliver,**

*Deputy Assistant Administrator for Operations, National Marine Fisheries Service.*

For the reasons stated in the preamble, 50 CFR part 648 is proposed to be amended as follows:

### PART 648—FISHERIES OF THE NORTHEASTERN UNITED STATES

1. The authority citation for part 648 continues to read as follows:

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

2. In § 648.6, paragraph (a)(1) is revised by adding a new final sentence to read as follows:

#### § 648.6 Dealer/processor permits.

(a) General. (1) \* \* \* Persons aboard vessels receiving transfers of scup at sea from other vessels are deemed not to be dealers, and are not required to possess a valid dealer permit under this section, for purposes of receiving scup, provided the vessel complies with § 648.13(2).

\* \* \* \* \*

3. In § 648.13, paragraph (i) is added to read as follows:

#### § 648.13 Transfers at sea.

\* \* \* \* \*

(i) *Scup.* (1) Except as provided in paragraph (i)(2) of this section, all persons or vessels issued a Federal scup permit are prohibited from transferring, or attempting to transfer, at sea any scup to any vessel, and all persons or vessels are prohibited from transferring, or attempting to transfer, at sea to any vessel any scup while in the EEZ, or any scup taken in or from the EEZ portion of the Scup Management Unit.

(2) The owner or operator of a vessel issued a Federal scup permit under § 648.4(a)(6)(i)(A) may transfer at sea scup taken in or from the EEZ portion of the Scup Management Unit, provided:

(i) The transfer occurs between vessels with Federal scup permits;

(ii) The transfer occurs seaward of a boundary line that begins at 40°50' N. lat., 70°00' W. long., and runs south to connect points at 40°15' N. lat., 73°30' W. long.; 37°50' N. lat., 75°00' W. long.; and 35°30' N. lat., 75°00' W. long.;

(iii) The donating and receiving vessels possess gear that meets the requirements at § 648.123(a)(2), (3), and (4) for commercial scup fishing gear;

(iv) The transfer occurs in the Winter I or Winter II periods of the scup fishing year;

(v) There is only one transfer per fishing trip for the donor vessel;

(vi) The donor vessel removes only enough scup from the net to attain the scup possession limit;

(vii) After removal of scup from the net by the donor vessel, only the entire codend, with all its contents, is transferred to the receiving vessel;

(viii) Only scup are retained by the receiving vessel;

(ix) While fishing for scup, all other nets are stored in accordance with § 648.23(b)(1); and

(x) The donating and receiving vessels report the transfer amount on the vessel trip report for each vessel.

4. In § 648.14, new paragraph (k)(13) is added to read as follows:

**§ 648.14 Prohibitions.**

\* \* \* \* \*

(k) \* \* \*

(13) Transfer scup at sea, except pursuant to provisions of § 648.13(i).

\* \* \* \* \*

5. In § 648.21, paragraph (g)(5) is revised to read as follows:

**§ 648.21 Procedures for determining initial annual amounts.**

\* \* \* \* \*

(g) \* \* \*

(5) If a proposal is disapproved by the Regional Administrator or the NOAA Grants Office, or if the Regional Administrator determines that the allocated research quota cannot be utilized by a project, the Regional Administrator shall reallocate the disapproved or unused amount of research quota to the respective commercial and recreational fisheries by notice in the **Federal Register**, provided:

(i) The reallocation of the disapproved or unused amount of research quota is in accord with National Standard 1, and can be available for harvest before the end of the fishing year in which the initial allocation was made; and

(ii) Any reallocation of unused research quota shall be consistent with the proportional division of quota between the commercial and recreational fisheries in the relevant FMP and allocated to the remaining quota periods for the fishing year proportionally.

\* \* \* \* \*

6. In § 648.123, paragraph (a)(1) is revised to read as follows:

**§ 648.123 Gear restrictions.**

(a) \* \* \*

(1) *Minimum mesh size.* No owner or operator of an otter trawl vessel that is issued a scup moratorium permit may possess 500 lb (226.8 kg) or more of scup from November 1 through April

30, or 100 lb (45.4 kg) or more of scup from May 1 through October 31, unless fishing with nets that have a minimum mesh size of 4.5-inch (11.4-cm) diamond mesh for no more than 25 continuous meshes forward of the terminus of the codend, and with at least 100 continuous meshes of 5.0-inch (12.7-cm) mesh forward of the 4.5-inch (11.4-cm) mesh, and all other nets are stowed in accordance with § 648.23(b)(1). For trawl nets with codends (including an extension) less than 125 meshes, the entire trawl net must have a minimum mesh size of 4.5 inches (11.4 cm) throughout the net. Scup on board these vessels shall be stowed separately and kept readily available for inspection. Measurement of nets will be in conformity with § 648.80(f)(2)(ii).

\* \* \* \* \*

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