

Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i) and (o), 303(r), 403, 554(g), and 606, *Notice is Hereby Given* of the proposals described in the *Notice of Proposed Rulemaking*.

27. The Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, SHALL SEND a copy of the *Notice of Proposed Rulemaking*, including the Initial Regulatory Analysis, to the Chief Counsel for Advocacy of the Small Business Administration in accordance with the Regulatory Flexibility Act.

Federal Communications Commission.

**Marlene H. Dortch,**

*Secretary.*

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 648

[Docket No. 040804226-4226-01; I.D. 071904C]

RIN 0648-AR50

#### Fisheries of the Northeastern United States; Summer Flounder, Scup, and Black Sea Bass Fisheries; Framework Adjustment 5

**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 5 (Framework 5) to the Summer Flounder, Scup, and Black Sea Bass Fishery Management Plan (FMP) that would allow for specification of the annual Total Allowable Landings (TAL) for multiple years. The intent is to provide flexibility and efficiency to the management of the species.

**DATES:** Comments must be received on or before September 14, 2004.

**ADDRESSES:** Copies of Framework 5, the Regulatory Impact Review (RIR), Initial Regulatory Flexibility Analysis (IRFA), and other supporting documents are available from Daniel Furlong, Executive Director, Mid-Atlantic Fishery Management Council, Room 2115, Federal Building, 300 South Street, Dover, DE 19901-6790. The 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 5." Comments may also be submitted via facsimile (fax) to 978-281-9135, or via e-mail to the following address: [FSBFW5@noaa.gov](mailto:FSBFW5@noaa.gov). Include in the subject line of the e-mail comment the following document identifier: "Comments on Framework 5." Comments may also be submitted electronically through the Federal e-Rulemaking portal: <http://www.regulations.gov>.

**FOR FURTHER INFORMATION CONTACT:** Sarah McLaughlin, Fishery Policy Analyst, (978) 281-9279, fax (978) 281-9135.

#### SUPPLEMENTARY INFORMATION:

##### Background

The summer flounder, scup, and black sea bass fisheries are managed cooperatively by the Atlantic States Marine Fisheries Commission (Commission) and the Mid-Atlantic Fishery Management Council (Council), in consultation with the New England and South Atlantic Fishery Management Councils. The management units specified in the FMP include summer flounder (*Paralichthys dentatus*) in U.S. waters of the Atlantic Ocean from the southern border of 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. Implementing regulations for these fisheries are found at 50 CFR part 648, subparts A, G (summer flounder), H (scup), and I (black sea bass).

The current regulations outline an annual process for specifying the catch limits for the summer flounder, scup, and black sea bass commercial and recreational fisheries, as well as other management measures (e.g., mesh requirements, minimum fish sizes, gear restrictions, possession restrictions, and area restrictions) for these fisheries. The measures are intended to achieve the annual targets set forth for each species in the FMP, specified either as a fishing mortality (F) rate or an exploitation rate (the proportion of fish available at the beginning of the year that are removed by fishing during the year). Once the catch limits are established, they are divided into quotas based on formulas contained in the FMP.

The Council developed Framework 5, pursuant to §§ 648.108, 648.127, and

648.147, in order to streamline the administrative and regulatory processes involved in specifying the TALs for the summer flounder, scup, and black sea bass fisheries, while, at the same time, maintaining consistency with the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). In particular, Framework 5 would allow for specification of TALs for the summer flounder, scup, and/or black sea bass fisheries in any given year for the following 1 to 3 years. Under the current management system, specification of commercial quotas and recreational harvest limits for these fisheries is done on an annual basis. Under the proposed process, all of the environmental and regulatory review procedures currently required under the Magnuson-Stevens Act, National Environmental Policy Act, and other applicable law would be conducted and documented during the year in which the multi-year specifications are set. The analyses would consider impacts throughout the time span for which specifications are set (i.e., 1 to 3 years). TALs would not have to be constant from year to year within the multi-year specifications, but would instead be based upon expectations of future stock conditions as indicated by the best scientific information available at the time the multi-year specifications are set.

Annual review of updated information on the fisheries by the Council's Summer Flounder, Scup, and Black Sea Bass Monitoring Committees and Council would not be required during the period of multi-year specifications. As such, adjustments to the TALs for years 2 and/or 3 would not occur once the multi-year specifications are set. Given the absence of an annual review TAL adjustment process, environmental impact evaluation in the specification setting year would have to consider thoroughly the uncertainty associated with projected estimates of stock size in the 2- to 3-year time horizon. Accordingly, Council recommendations for multi-year TALs would be expected to be appropriately conservative in order to reflect this uncertainty. Under Framework 5, the Council would not be obligated to specify multi-year TALs, but would be able, depending on the information available and the status of the fisheries, to specify TALs for the following 1, 2, or 3 years, as appropriate.

Although the Council's process for setting multi-year TALs would occur prior to the first year that the specifications would be in place, with no requirement to review the specifications prior to the second and/

or third years, NMFS would continue to publish a proposed and final rule each year, notifying the public of the commercial quotas and recreational harvest limits. While the Council would set the TALs for multiple years; the actual quotas available to the fisheries in any one year would be a function of the specified TALs, as reduced to account for any quota overages in previous years and to account for research set-aside (RSA) allocations set by the Council for the upcoming fishing year. Quota overages cannot be determined beforehand, and RSA allocations are set based on research proposals submitted, reviewed, and selected on an annual basis. NMFS would also continue to issue inseason actions, as necessary, to adjust commercial quotas based on updated landings information, to close a fishery or season when a quota is projected to be reached, and/or to roll over available scup quota from the Winter I period to the Winter II period, as already established in the FMP.

During the development of Framework 5, the Council considered and analyzed three alternatives for a multi-year specifications process: A no-action alternative, which would continue the requirement to establish summer flounder, scup, and black sea bass specifications on an annual basis; the proposed alternative; and an alternative that would require the Council to conduct an annual review of the previously established multi-year specifications. The Council selected the proposed action because it provided the most straightforward and efficient administrative process for establishing multi-year specifications, and is expected to provide greater regulatory consistency and predictability to the commercial and recreational fishing sectors.

In addition to the changes proposed in Framework 5, this proposed rule also would make several administrative changes to other aspects of the regulations governing the summer flounder, scup, and black sea bass fisheries to: (1) Reduce the application burden and specify the minimum enrollment period for the summer flounder small mesh exemption area to make the Letter of Authorization (LOA) consistent with all other Northeast Region LOAs, clarify the requirements of the LOA, clarify that the small-mesh possession restrictions do not apply to vessels fishing under the LOA in the exemption area, and correct the reference to net stowage requirements; (2) include the summer flounder fishery in the list of fisheries for which an operator permit is required; and (3)

include in the list of potential recommendations by the Scup and Black Sea Bass Monitoring Committees a scup and black sea bass research quota set from a range of 0 to 3 percent of the maximum allowed to achieve the specified exploitation rate. A further explanation of these proposed regulatory changes appears in the Classification section of this preamble.

#### 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 elsewhere in this preamble. This preamble also includes complete descriptions of the proposed, no action, and other alternatives discussed here. Under the current management system, the Council annually submits a specifications document to NMFS for review. Under the other two alternatives, the Council would submit a specifications document only in the first year of the multi-year specifications period, if applicable. This would reduce substantially the administrative burden on both the Council and NMFS and would allow for more efficient use of NMFS resources in preparing the annual of multi-year specifications for other fisheries, and may species. Additionally, longer term specifications should provide greater regulatory consistency and predictability to the commercial and recreational fishing sectors. Under the proposed alternative, annual review of updated information on the fisheries by the Council's Summer Flounder, Scup, and Black Sea Bass Monitoring Committees and Council would not be required during the period of multi-year specifications. The Council and NMFS have considered the risk that harvest at specified TALs in a given year could exceed appropriate fishing mortality rates for the management units as a result of multi-year specifications. The risks associated with these potential outcomes would be carefully considered by the Council when determining the appropriate TALs for years two and three in the specification setting year as part of the specifications process. Although the provision for an annual review reduces the risk of negative impacts to the fishery resources, it would also reduce administrative efficiency by increasing the chance that a previous specified TAL would be

modified even for de minimus changes in TAL.

The reporting and record keeping requirements associated with the issuance of the operator permits has been previously approved by the Office of Management and Budget under OMB approval number 0648-0202. There are no relevant Federal rules that duplicate, overlap, or conflict with this rule. Framework 5 deals only with the administrative periodicity of annual TAL setting, and therefore would have minimal direct effect on entities participating in these fisheries. The other actions in this proposed rule are also solely administrative in nature and are intended to clarify existing regulations. The proposed action regarding the summer flounder small mesh exemption LOA would clarify the application process and reduce the burden on applicants. The requirement for an operator permit in the summer flounder fishery corrects an inadvertent omission and would affect only one summer flounder moratorium permit holder, who would be required to complete and submit a one-page form; the public reporting burden for the collection of information is estimated to be one hour per response. All of the other summer flounder moratorium permit holders are in compliance as a result of holding other Federal permits. The action regarding setting the research quota for the scup and black sea bass fisheries within a range of 0 to 3 percent of TALs specified for these species was the maximum allowed to achieve the specified exploitation rate was discussed in the preamble to a final rule regarding these fisheries in 2001 (66 FR 42156, August 10, 2001), but the associated change to the regulatory text was not made at that time.

#### List of Subjects in 50 CFR Part 648

Fishing, Fisheries, Reporting and recordkeeping requirements.

Dated: August 23, 2004.

#### Rebecca Lent,

*Deputy Assistant Administrator for Regulatory Programs, 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 § 648.4, paragraph (a)(3)(iii) is revised to read as follows:

**§ 648.4 Vessel permits.**

(a) \* \* \*

(3) \* \* \*

(iii) *Exemption permits.* Owners of summer flounder vessels seeking an exemption from the minimum mesh requirement under the provisions of § 648.104(b)(1) must request a letter of authorization (LOA) from the Regional Administrator. Vessels must be enrolled in the exemption program for a minimum of 7 days. The Regional Administrator may impose temporary additional procedural requirements by publishing a notification in the **Federal Register**. If a summer flounder charter or party requirement of this part differs from a summer flounder charter or party management measure required by a state, any vessel owners or operators fishing under the terms of a summer flounder charter/party vessel permit in the EEZ for summer flounder must comply with the more restrictive requirement while fishing in state waters, unless otherwise authorized under § 648.107.

\* \* \* \* \*

3. In § 648.5, paragraph (a) is revised to read as follows:

**§ 648.5 Operator permits.**

(a) *General.* Any operator of a vessel fishing for or possessing Atlantic sea scallops in excess of 40 lb (18.1 kg), NE multispecies, spiny dogfish, monkfish, Atlantic herring, Atlantic surf clam, ocean quahog, Atlantic mackerel, squid, butterfish, summer flounder, scup, black sea bass, or bluefish, harvested in or from the EEZ; tilefish harvested in or from the EEZ portion of the Tilefish Management Unit; skates harvested in or from the EEZ portion of the Skate Management Unit; or Atlantic deep-sea red crab harvested in or from the EEZ portion of the Red Crab Management Unit, issued a permit, including carrier and processing permits, for these species under this part, must have been issued under this section, and carry on board, a valid operator permit. An operator's permit issued pursuant to part 697 of this chapter satisfies the permitting requirement of this section. This requirement does not apply to operators of recreational vessels.

\* \* \* \* \*

4. In § 648.14, paragraph (a)(89) is revised to read as follows:

**§ 648.14 Prohibitions.**

(a) \* \* \*

(89) Fish for, catch, and retain, or land scup in or from the EEZ north of 35° 15.3' N. lat. in excess of the landing limit established pursuant to § 648.120(b)(3) and (b)(4).

\* \* \* \* \*

5. In § 648.100, paragraph (a) and the headings of paragraphs (b) and (c) are revised, and a new paragraph (b)(11) is added to read as follows:

**§ 648.100 Catch quotas and other restrictions.**

(a) *Review.* The Summer Flounder Monitoring Committee shall review the following data on or before August 15 of each year, unless a TAL has already been established for the upcoming calendar year as part of a multiple-year specification process, provided that new information does not require a modification to the multiple-year quotas, to determine the annual allowable levels of fishing and other restrictions necessary to achieve, with at least a 50-percent probability of success, a fishing mortality rate (F) that produces the maximum yield per recruit (F<sub>max</sub>): Commercial, recreational, and research catch data; current estimates of fishing mortality; stock status; recent estimates of recruitment; virtual population analysis results; levels of noncompliance by fishermen or individual states; impact of size/mesh regulations; sea sampling and winter trawl survey data or, if sea sampling data are unavailable, length frequency information from the winter trawl survey and mesh selectivity analyses; impact of gear other than otter trawls on the mortality of summer flounder; and any other relevant information.

(b) *Recommend measures on an annual basis.* \* \* \*

\* \* \* \* \*

(11) Total allowable landings on an annual basis for a period not to exceed three years

(c) *Fishing measures.* \* \* \*

\* \* \* \* \*

6. In § 648.104, paragraph (b)(1) is revised to read as follows:

**§ 648.104 Gear restrictions.**

\* \* \* \* \*

(b) \* \* \*

(1) Vessels issued a summer flounder moratorium permit, a summer flounder small-mesh exemption area letter of authorization (LOA), required under paragraph (b)(1)(i) of this section, and fishing from November 1 through April 30 in the exemption area, which is east of the line that follows 72°30.0' W. long. until it intersects the outer boundary of the EEZ (copies of a map depicting the area are available upon request from the Regional Administrator). Vessels fishing under the LOA shall not fish west of the line. Vessels issued a permit under § 648.4(a)(3)(iii) may transit the area west or south of the line, if the vessel's fishing gear is stowed in a manner prescribed under § 648.100(e), so that it

is not "available for immediate use" outside the exempted area. The Regional Administrator may terminate this exemption if he/she determines, after a review of sea sampling data, that vessels fishing under the exemption are discarding more than 10 percent, by weight, of their entire catch of summer flounder per trip. If the Regional Administrator makes such a determination, he/she shall publish notification in the **Federal Register** terminating the exemption for the remainder of the exemption season.

(i) *Requirements.* (A) A vessel fishing in the Summer Flounder Small-Mesh Exemption Area under this exemption must have on board a valid LOA issued by the Regional Administrator.

(B) The vessel must be in enrolled in the exemption program for a minimum of 7 days.

(ii) [Reserved]

\* \* \* \* \*

7. In § 648.105, the first sentence of paragraph (d) is revised to read as follows:

**§ 648.105 Possession restrictions.**

\* \* \* \* \*

(d) Owners and operators of otter trawl vessels issued a permit under § 648.4(a)(3) that fish with or possess nets or pieces of net on board that do not meet the minimum mesh requirements and that are not stowed in accordance with § 648.104(e), may not retain 100 lb (45.3 kg) or more of summer flounder from May 1 through October 31, or 200 lb (90.6 kg) or more of summer flounder from November 1 through April 30, unless the vessel possess a valid summer flounder small-mesh exemption LOA and is fishing in the exemption area as specified in § 648.104(b). \* \* \*

8. In § 648.120, paragraphs (b)(1) through (b)(10) are redesignated as paragraphs (b)(2) through (b)(11); paragraph (a) and the heading of paragraph (c) is revised, and new paragraphs (b)(1) and (b)(12) are added to read as follows:

**§ 648.120 Catch quotas and other restrictions.**

(a) *Review.* The Scup Monitoring Committee shall review the following data, subject to availability, on or before August 15 of each year, unless a TAL already has been established for the upcoming calendar year as part of a multiple-year specification process, provided that new information does not require a modification to the multiple-year quotas: Commercial, recreational and research data; current estimates of fishing mortality; stock status; recent estimates of recruitment; virtual

population analysis results; levels of noncompliance by fishermen or individual states; impact of size/mesh regulations; impact of gear on the mortality of scup; and any other relevant information. This review will be conducted to determine the allowable levels of fishing and other restrictions necessary to achieve the F that produces the maximum yield per recruit (F<sub>max</sub>).

(b) \* \* \*

(1) Research quota set from a range of 0 to 3 percent of the maximum allowed to achieve the specified exploitation rate.

\* \* \* \* \*

(12) Total allowable landings on an annual basis for a period not to exceed three years.

(c) *Fishing measures.* \* \* \*

\* \* \* \* \*

9. In § 648.140, paragraphs (b)(1) through (b)(9) are redesignated as paragraphs (b)(2) through (b)(10) and

paragraph (a) and the heading of paragraph (c) are revised, and new paragraphs (b)(1) and (b)(11) are added to read as follows:

**§ 648.140 Catch quotas and other restrictions.**

(a) *Review.* The Black Sea Bass Monitoring Committee will review the following data, subject to availability, on or before August 15 of each year, unless a TAL already has been established for the upcoming calendar year as part of a multiple-year specification process, provided that new information does not require a modification to the multiple-year quotas, to determine the allowable levels of fishing and other restrictions necessary to result in a target exploitation rate of 23 percent (based on F<sub>max</sub>) in 2003 and subsequent years: Commercial, recreational, and research catch data; current estimates of fishing mortality; stock status; recent estimates of recruitment; virtual population

analysis results; levels of noncompliance by fishermen or individual states; impact of size/mesh regulations; sea sampling and winter trawl survey data, or if sea sampling data are unavailable, length frequency information from the winter trawl survey and mesh selectivity analyses; impact of gear other than otter trawls, pots and traps on the mortality of black sea bass; and any other relevant information.

(b) \* \* \*

(1) Research quota set from a range of 0 to 3 percent of the maximum allowed to achieve the specified exploitation rate.

\* \* \* \* \*

(11) Total allowable landings on an annual basis for a period not to exceed three years.

(c) *Fishing measures.* \* \* \*

\* \* \* \* \*

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