

FOR FURTHER INFORMATION CONTACT:

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SUPPLEMENTARY INFORMATION:**Background**

For many years, DOT's Federal Aviation Administration (FAA) had statutory authority to prevent disclosure of information related to aviation security, termed "Sensitive Security Information (SSI)." In the leading case of *Public Citizen v. Federal Aviation Administration*, 300 U.S. App. DC 238; 988 F.2d 186 (DC Cir. 1993), the court set forth three aspects of this authority:

1. The statute under which FAA restricted disclosure of this information—49 U.S.C. App. 1357(d) (2) (1993)—qualified under Exemption 3 of the Freedom of Information Act (FOIA) as a "statute (A) [that] requires that the matters be withheld from the public in such a way as to leave no discretion on the issue, or (B) establishes particular criteria for withholding or refers to particular types of matters to be withheld." (5 U.S.C. 552(b) (3)). Hence, SSI may be withheld from public disclosure under FOIA.

2. The information may be withheld from the public rulemaking record in an informal rulemaking under 5 U.S.C. 553.

3. The information may be withheld from discovery in civil litigation.

In response to the attacks upon the United States on September 11, 2001, Congress enacted the Aviation and Transportation Security Act (Public Law 107-71, 115 Stat. 597 (2001)), which created in DOT a new Transportation Security Administration (TSA). 49 U.S.C. 114. That statute also transferred from the FAA to the TSA the authority to denominate information as SSI and expanded the scope of that authority to all modes of transportation. 49 U.S.C. 114(s). When Congress created the Department of Homeland Security (DHS) in the Homeland Security Act of 2002, (Public Law 107-295, 116 Stat. 2064 (2002)), it transferred TSA from DOT to DHS, continued its SSI authority, and gave similar authority to DOT, again as to all modes of transportation. See 49 U.S.C. 40119(b).

Both 49 U.S.C. 114(s) and 49 U.S.C. 40119(b) require, as did 49 U.S.C. App. 1357(d) (2), that the agency administering SSI authority promulgate regulations specifying the types of information qualifying for SSI treatment. FAA's regulations appeared at 14 CFR part 191; DOT's appear at 49 CFR part 15, Protection of Sensitive

Security Information; TSA's appear at 49 CFR part 1520, Protection of Sensitive Security Information.

Part 15 sets forth categories of information that qualify as SSI and authorizes the Secretary of Transportation to determine that specific items of information come within any of those categories. The purpose of this document is to delegate to all DOT Administrators this authority of the Secretary as to matters within their purview, with authority to redelegate within their own organizations; and to delegate this authority to the General Counsel and the Director of Intelligence and Security for all matters in DOT.

This rule is being published as a final rule and made effective on the date signed by the Secretary. As the rule relates to Departmental management, procedures, and practices, notice and comment on it are unnecessary under 5 U.S.C. 553(b)(3)(A). In addition, since this rule relates to internal procedures, there is good cause to make it effective in less than 30 days pursuant to 5 U.S.C. 553(d).

Regulatory Analyses and Notices

The Office of the Secretary of Transportation (OST) has determined that this action is not a significant regulatory action under Executive Order 12866 or under the Department's Regulatory Policies and Procedures. There are no costs associated with this rule. Because this rule will only apply to internal DOT operations, OST certifies that this rule will not have a significant economic impact on a substantial number of small entities. OST also has determined that there are not sufficient federalism implications to warrant preparation of a federalism statement.

Paperwork Reduction Act

This rule contains no information collection requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520).

Unfunded Mandates Reform Act of 1995

OST has determined that the requirements of Title II of the Unfunded Mandates Reform Act of 1995 do not apply to this rulemaking.

List of Subjects in 49 CFR Part 1

Authority delegations, Organizations and functions.

■ For the reasons set forth in the preamble, the Office of the Secretary amends 49 CFR part 1 as follows:

PART 1—ORGANIZATION AND DELEGATION OF POWERS AND DUTIES

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

Authority: 49 U.S.C. 322; 46 U.S.C. 2104(a); 28 U.S.C. 2672; 31 U.S.C. 3711(a)(2); Pub. L. 101-552, 104 Stat. 2736; Pub. L. 106-159, 113 Stat. 1748; Pub. L. 107-71, 115 Stat. 597.

■ 2. In § 1.45, add a new paragraph (a)(19) to read as follows:

§ 1.45 Delegations to all Administrators.

(a) * * *

(19) Carry out the functions vested in the Secretary by 49 U.S.C. 40119(b), as implemented by 49 CFR part 15, relating to the determination that information is Sensitive Security Information within their respective organizations.

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■ 3. In § 1.57, add and reserve paragraphs (r) and (s) and add a new paragraph (t) to read as follows:

§ 1.57 Delegations to General Counsel.

* * * * *

(t) Carry out the functions vested in the Secretary by 49 U.S.C. 40119(b), as implemented by 49 CFR part 15, relating to the determination that information is Sensitive Security Information.

■ 4. In § 1.69, add a new paragraph (c) to read as follows:

§ 1.69 Delegations to the Director of Intelligence and Security.

* * * * *

(c) Carry out the functions vested in the Secretary by 49 U.S.C. 40119(b), as implemented by 49 CFR part 15, relating to the determination that information is Sensitive Security Information.

Issued in Washington, DC, on this 5th day of January 2005.

Norman Y. Mineta,

Secretary of Transportation.

[FR Doc. 05-866 Filed 1-14-05; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[Docket No 041110317-4364-02; I.D. 110404B]

RIN 0648-AR51

50 CFR Part 648

Fisheries of the Northeastern United States; Summer Flounder, Scup, and Black Sea Bass Fisheries; 2005 and 2006 Summer Flounder Specifications; 2005 Scup and Black Sea Bass Specifications; Correction

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

ACTION: Final rule; correction.

SUMMARY: NMFS published in the *Federal Register* of January 4, 2005, a final rule containing final specifications for the 2005 and 2006 summer flounder fisheries and for the 2005 scup and black sea bass fisheries. Inadvertently, Table 4 of the final rule contained an incorrect Winter I period scup possession limit. This document corrects that error.

DATES: Effective January 1, 2005.

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

SUPPLEMENTARY INFORMATION: The final rule, including final quota specifications for the summer flounder, scup, and black sea bass fisheries, was published in the *Federal Register* on January 4, 2005 (70 FR 303). Table 4 incorrectly listed the Winter I period scup possession limit (per trip) as 15,000 lb (6,804 kg); the correct amount is 30,000 lb (13,608 kg). The entries at the 2nd row, 11th and 12th columns of Table 4 are corrected to read 30,000 lb and 13,608 kg, respectively.

Dated: January 12, 2005.

Alan D. Risenhoover,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 040112010-4114-02; I.D.011105I]

Northeast (NE) Multispecies Fishery; Re-opening of the Eastern U.S./Canada Area; and Removal of Daily Poundage Limits for Yellowtail Flounder in the U.S./Canada Management Area, and Cod in the Eastern U.S./Canada Area

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

ACTION: Re-opening and removal of daily poundage limits.

SUMMARY: NMFS announces that the Administrator, Northeast Region, NMFS (Regional Administrator), is re-opening the Eastern U.S./Canada Area to all limited access NE multispecies days-at-sea (DAS) vessels and is removing the prohibition on all NE multispecies limited access vessels from harvesting, possessing, or landing Georges Bank (GB) yellowtail flounder from within the entire U.S./Canada Management Area. This action also removes the yellowtail flounder and cod daily poundage limits for the entire U.S./Canada Management Area and Eastern U.S./Canada Area, respectively, but retains the 15,000 lb (6,804 kg) trip limit for GB yellowtail flounder and a 5,000 lb (2,268 kg) trip limit for GB cod, consistent with ensuring that the Total Allowable Catches (TACs) for these species will not be exceeded by the end of the 2004 fishing year.

DATES: Effective 0001 hr local time, January 14, 2005, through 2400 hr local time April 30, 2005.

FOR FURTHER INFORMATION CONTACT: Karen Tasker, Fishery Management Specialist, (978) 281-9273, fax (978) 281-9135.

SUPPLEMENTARY INFORMATION: Regulations governing the yellowtail flounder and cod landing limits within the U.S./Canada Management Area are found at 50 CFR 648.85(a)(3)(iv). The regulations authorize vessels issued a valid limited access NE multispecies permit and fishing under a NE multispecies DAS to fish in the U.S./Canada Management Area under specific conditions. The TAC allocation for GB yellowtail flounder for the 2004 fishing year was specified at 6,000 mt in the final rule implementing Amendment 13 to the NE Multispecies Fishery

Management Plan (FMP). Once 30 percent and/or 60 percent of the yellowtail flounder TAC allocations specified for the U.S./Canada Management Area are projected to have been harvested, the regulations at § 648.85(a)(3)(iv)(D) authorize the Regional Administrator to close access to the Eastern U.S./Canada Area to all limited access NE multispecies DAS vessels and prohibit all NE multispecies limited access vessels from harvesting, possessing, or landing GB yellowtail flounder from the entire U.S./Canada Management Area to prevent overharvesting or underharvesting the yellowtail flounder TAC allocation.

Based upon Vessel Monitoring System (VMS) reports and other available information, the Regional Administrator determined that 85 percent of the GB yellowtail flounder TAC had been harvested by October 1, 2004 (69 FR 59815, October 6, 2004). NMFS closed the Eastern U.S./Canada Area, effective October 1, 2004, to all NE multispecies DAS vessels and prohibited all NE multispecies vessels from harvesting, possessing, or landing GB yellowtail flounder from the U.S./Canada Management Area, because of concerns that the yellowtail flounder TAC would be fully harvested or overharvested prior to the end of the fishing year. Full harvest or overharvest of the TAC was anticipated due to the amount of yellowtail flounder harvested by vessels targeting yellowtail flounder in the U.S./Canada Management Area, and because of concerns regarding expected yellowtail flounder bycatch by vessels targeting groundfish other than yellowtail flounder within the U.S./Canada Management Area. Additional concern was raised by the potential impact that may be caused by scallop vessels fishing in Closed Area II under the Sea Scallop Access Program implemented under Frameworks 16/39 to the Atlantic Sea Scallop/NE Multispecies FMPs. Because of these potential sources of yellowtail flounder harvest, this action was necessary to ensure that the GB yellowtail flounder TAC would not be exceeded during the 2004 fishing year.

At this time, data indicate that the amount of GB yellowtail flounder harvested under the Sea Scallop Access Program and the amount of GB yellowtail flounder bycatch caught by vessels targeting groundfish other than yellowtail flounder within the U.S./Canada Management Area will likely not result in the overharvest of the TAC. Therefore, under the authority of § 648.85(a)(3)(iv)(D), NMFS is re-opening the U.S./Canada Management Area to NE multispecies DAS vessels,