

performance. Although this scenario cannot be fully analyzed due to the absence of a clearly specified variable step decision rule, the initial limit is so low that it is expected to generate excessive negative impacts, particularly on the bottom longline sector.

Copies of the FRFA are available (see ADDRESSES).

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 an 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." As part of this rulemaking process, NMFS prepared a fishery bulletin, which also serves as a small entity compliance guide. The fishery bulletin will be sent to all vessel permit holders for the Gulf reef fish fishery.

#### List of Subjects in 50 CFR Part 622

Fisheries, Fishing, Puerto Rico, Reporting and recordkeeping requirements, Virgin Islands.

Dated: December 22, 2005.

**James W. Balsiger,**

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

■ For the reasons set out in the preamble, 50 CFR part 622 is amended as follows:

#### PART 622—FISHERIES OF THE CARIBBEAN, GULF, AND SOUTH ATLANTIC

■ 1. The authority citation for part 622 continues to read as follows:

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

■ 2. In § 622.44, introductory text and paragraph (g) are revised to read as follows (**Note:** This revision to § 622.44(g) supersedes the amendment to § 622.44(g) published in the temporary rule at 70 FR 48323, August 17, 2005):

#### § 622.44 Commercial trip limits.

Commercial trip limits are limits on the amount of the applicable species that may be possessed on board or landed, purchased, or sold from a vessel per day. A person who fishes in the EEZ may not combine a trip limit specified in this section with any trip or possession limit applicable to state waters. A species subject to a trip limit specified in this section taken in the EEZ may not be transferred at sea, regardless of where such transfer takes place, and such species may not be

transferred in the EEZ. For fisheries governed by this part, commercial trip limits apply as follows (all weights are round or eviscerated weights unless specified otherwise):

\* \* \* \* \*

(g) *Gulf deep-water and shallow-water grouper, combined.* For vessels operating under the quotas in § 622.42(a)(1)(ii) or (a)(1)(iii), the trip limit for Gulf deep-water and shallow-water grouper combined is 6,000 lb (2,722 kg), gutted weight. However, when the quotas in § 622.42(a)(1)(ii) or (a)(1)(iii) are reached and the respective fishery is closed, the commercial trip limit for the species subject to the closure is zero. (See § 622.42(a)(1)(ii) and (a)(1)(iii) for the species included in the deep-water and shallow-water grouper categories, respectively.)

[FR Doc. 05-24603 Filed 12-23-05; 12:48 pm]

**BILLING CODE 3510-22-P**

#### DEPARTMENT OF COMMERCE

#### National Oceanic and Atmospheric Administration

#### 50 CFR Part 648

[Docket No. 051104293-5344-02; I.D. 102705B]

**RIN 0648-AT27**

#### Fisheries of the Northeastern United States; Summer Flounder, Scup, and Black Sea Bass Fisheries; 2006 Summer Flounder, Scup, and Black Sea Bass Specifications; Preliminary 2006 Quota Adjustments; 2006 Summer Flounder Quota for Delaware

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

**ACTION:** Final rule.

**SUMMARY:** NMFS issues final specifications for the 2006 summer flounder, scup, and black sea bass fisheries, and makes preliminary adjustments to the 2006 commercial quotas for these fisheries. This final rule specifies allowed harvest limits for both commercial and recreational fisheries, including scup possession limits. This action prohibits federally permitted commercial vessels from landing summer flounder in Delaware in 2006. Regulations governing the summer flounder fishery require publication of this notification to advise the State of Delaware, Federal vessel permit holders, and Federal dealer permit holders that no commercial quota is available for

landing summer flounder in Delaware in 2006. This action also defines the total length measurement for black sea bass and makes changes to the regulations regarding the commercial black sea bass pot/trap fishery. The intent of this action is to establish harvest levels and other measures to attain the target fishing mortality (F) or exploitation rates, as specified for these species in the Summer Flounder, Scup, and Black Sea Bass Fishery Management Plan (FMP), to reduce bycatch, and to improve the efficiency of the commercial black sea bass fishery.

**DATES:** The 2006 final specifications are effective from January 1, 2006, through December 31, 2006. The amendment to the definition of "Total Length" in § 648.2 is effective January 1, 2006. The amendment to the definition of "Total Length" in § 648.2 is effective January 1, 2006. The amendments to the black sea bass gear restrictions at § 648.144(b)(2) are effective January 1, 2007.

**ADDRESSES:** Copies of the specifications document, including the Environmental Assessment (EA), Regulatory Impact Review (RIR), the Initial Regulatory Flexibility Analysis (IRFA), and other supporting documents used by the Summer Flounder, Scup, and Black Sea Bass Monitoring Committees are available from Daniel Furlong, Executive Director, Mid-Atlantic Fishery Management Council, Room 2115, Federal Building, 300 South Street, Dover, DE 19901-6790. The specifications document is also accessible via the Internet at <http://www.nero.noaa.gov>. The Final Regulatory Flexibility Analysis (FRFA) consists of the IRFA, public comments and responses contained in this final rule, and the summary of impacts and alternatives contained in this final rule. Copies of the small entity compliance guide are available from Patricia A. Kurkul, Regional Administrator, Northeast Region, National Marine Fisheries Service, One Blackburn Drive, Gloucester, MA 01930-2298.

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

#### 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, subpart A (general provisions), subpart G (summer flounder), subpart H (scup), and subpart I (black sea bass).

The regulations outline the process for specifying the annual catch limits for the summer flounder, scup, and black sea bass commercial and recreational fisheries, as well as other management measures (e.g., mesh requirements, minimum fish sizes, gear restrictions, possession restrictions, and area restrictions) for these fisheries. The measures are intended to achieve the annual targets set forth for each species in the FMP, specified either as an F or an exploitation rate (the proportion of fish available at the beginning of the year that may be removed by fishing during the year). Once the catch limits are established, they are divided into quotas based on formulas contained in the FMP. Detailed background information regarding the status of the summer flounder, scup, and black sea bass stocks and the development of the 2006 specifications for these fisheries

was provided in the proposed specifications (70 FR 69722, November 17, 2005). That information is not repeated here.

NMFS will establish the 2006 recreational management measures for summer flounder, scup, and black sea bass by publishing a proposed and final rule in the **Federal Register** at a later date, following receipt of the Council's recommendations as specified in the FMP.

**Summer Flounder**

The FMP specifies a target F of  $F_{max}$ , that is, the level of fishing that produces maximum yield per recruit. The best available scientific information indicates that, for 2006,  $F_{max}$  for summer flounder is 0.276 (equal to an exploitation rate of about 22 percent from fishing). The Total Allowable Landings (TAL) associated with the target F is allocated 60 percent to the commercial sector and 40 percent to the recreational sector. The commercial quota is allocated to the coastal states based upon percentage shares specified in the FMP. The recreational harvest limit is specified on a coastwide basis. Recreational measures will be the subject of a separate rulemaking early in 2006.

This final rule implements the specifications contained in the November 17, 2005, proposed rule—a summer flounder TAL of 23.59 million lb (10,700 mt) for 2006. The TAL for

2006 is allocated 14,154,000 lb (6,420 mt) to the commercial sector and 9,436,000 lb (4,280 mt) to the recreational sector. This TAL has at least a 50-percent probability of achieving the target F of 0.276 in 2006, if the 2005 TAL and assumed discard levels are not exceeded. Three research projects that would utilize the full summer flounder research set-aside (RSA) of 355,762 lb (161 mt) have been conditionally approved by NMFS and are currently awaiting notice of award. After deducting this RSA, the TAL is divided into a commercial quota of 13,940,543 lb (6,303 mt) and a recreational harvest limit of 9,293,695 lb (4,216 mt). If a project is not approved by the NOAA Grants Office, the research quota associated with the disapproved proposal will be restored to the summer flounder TAL through publication in the **Federal Register**.

Consistent with the revised quota setting procedures for the FMP (67 FR 6877, February 14, 2002), summer flounder overages are determined based upon landings for the period January–October 2005, plus any previously unaccounted for landings from January–December 2004. Table 1 summarizes, for each state, the commercial summer flounder percent share, the 2006 commercial quota (both initial and less the RSA), the 2005 quota overages as described above, and the resulting final adjusted 2006 commercial quota less the RSA.

TABLE 1.—FINAL STATE-BY-STATE COMMERCIAL SUMMER FLOUNDER ALLOCATIONS FOR 2006

State	Percent share	Initial quota		Initial quota, less RSA		2005 Quota overages (through 10/31/05) <sup>1</sup>		Adjusted quota, less RSA <sup>2</sup>	
		lb	kg	lb	kg	lb	kg	lb	kg
ME .....	0.04756	6,732	3,053	6,630	3,007	0	0	6,630	3,007
NH .....	0.00046	65	30	64	29	0	0	64	29
MA .....	6.82046	965,368	437,891	950,809	431,287	19,059	8,645	931,750	422,635
RI .....	15.68298	2,219,769	1,006,887	2,186,293	991,702	0	0	2,186,293	991,702
CT .....	2.25708	319,467	144,910	314,649	142,725	0	0	314,649	142,725
NY .....	7.64699	1,082,355	490,956	1,066,032	483,552	130,089	59,007	935,943	424,537
NJ .....	16.72499	2,367,255	1,073,787	2,331,554	1,057,593	0	0	2,331,554	1,057,593
DE .....	0.01779	2,518	1,142	2,480	1,125	49,033	22,241	(46,553)	(21,116)
MD .....	2.03910	288,614	130,915	284,262	128,941	0	0	284,262	128,941
VA .....	21.31676	3,017,174	1,368,590	2,971,672	1,347,950	0	0	2,971,672	1,347,950
NC .....	27.44584	3,884,684	1,762,093	3,826,099	1,735,519	0	0	3,826,099	1,735,519
Total <sup>3</sup> .....	100.00	14,154,000	6,420,254	13,940,543	6,323,430	198,181	89,893	13,788,916	6,254,547

<sup>1</sup> 2005 quota overage is determined through comparison of landings for January through October 2005, plus any landings in 2004 in excess of the 2004 quota (that were not previously addressed in the 2005 specifications), with the final 2005 quota for each state (70 FR 303, January 4, 2005). For Delaware, includes continued repayment of overharvest from 2004.

<sup>2</sup> Parentheses indicate a negative number.

<sup>3</sup> Total quota is the sum of all states having allocation. A state with a negative number has an allocation of zero (0). Kilograms are as converted from pounds and may not necessarily add due to rounding.

The Commission has established a system whereby 15 percent of each state's quota may be voluntarily set aside each year to enable vessels to land an incidental catch allowance after the directed fishery in a state has been closed. The intent of the incidental

catch set-aside is to reduce discards by allowing fishermen to land summer flounder caught incidentally in other fisheries during the year, while ensuring that the state's overall quota is not exceeded. These Commission set-asides are not included in these 2006 final

summer flounder specifications because NMFS does not have authority to establish such subcategories.

**Delaware Summer Flounder Closure**

Table 1 (above) indicates that, for Delaware, the amount of the 2005

summer flounder quota coverage (inclusive of overharvest from 2004) is greater than the amount of commercial quota allocated to Delaware for 2006. As a result, there is no quota available for 2006 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 Regional Administrator has determined no longer has commercial quota available for harvest. Therefore, effective January 1, 2006, landings of summer flounder in Delaware by vessels holding commercial Federal summer flounder fisheries permits are prohibited for the 2006 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 2006 calendar year, unless additional quota becomes available through a transfer, as mentioned above.

**Scup**

The target exploitation rate for scup for 2006 is 21 percent. The FMP

specifies that the Total Allowable Catch (TAC) associated with a given exploitation rate be allocated 78 percent to the commercial sector and 22 percent to the recreational sector. Scup discard estimates are deducted from both sectors' TACs to establish TALs for each sector, i.e., TAC minus discards equals TAL. The commercial TAC, discards, and TAL (commercial quota) are then allocated on a percentage basis to three quota periods, as specified in the FMP: Winter I (January–April)—45.11 percent; Summer (May–October)—38.95 percent; and Winter II (November–December)—15.94 percent. The recreational harvest limit is allocated on a coastwide basis. Recreational measures will be the subject of a separate rulemaking early in 2006.

This final rule implements the specifications contained in the November 17, 2005, proposed rule, i.e., a 19.79–million-lb (8,977–mt) scup TAC and a 16.27–million-lb (7,380–mt) scup TAL. After deducting 184,690 (84 mt) of RSA for the three approved research projects, the TAL is divided into a commercial quota of 11,932,142 lb (5,412 mt) and a recreational harvest limit of 4,153,168 lb (1,884 mt). If a

project is not approved by the NOAA Grants Office, the research quota associated with the disapproved proposal will be restored to the scup TAL through publication in the **Federal Register**.

Consistent with the revised quota setting procedures established for the FMP (67 FR 6877, February 14, 2002), scup overages are determined based upon landings for the Winter I and Summer 2005 periods, plus any previously unaccounted for landings from January–December 2004. Table 2 presents the final 2005 commercial scup quota for each period and the reported 2005 landings for the 2005 Winter I and Summer periods; there was no overage of the Winter I or Summer quota. On August 2, 2005 (70 FR 44291), and as corrected on October 4, 2005 (70 FR 57802), NMFS announced a transfer of quota from Winter I to Winter II 2005. Per the quota counting procedures, after June 30, 2006, NMFS will compile all available landings data for Winter II 2005 and compare the landings to the Winter II 2005 allocation, as adjusted. Any overages will be determined and required deductions will be made to the Winter II 2006 allocation.

TABLE 2.—SCUP PRELIMINARY 2005 COMMERCIAL LANDINGS BY QUOTA PERIOD

Quota period	2005 quota		Reported 2005 landings through 10/31/05		Preliminary overages as of 10/31/05	
	lb	kg	lb	kg	lb	kg
Winter I .....	5,518,367	2,503,089	3,709,863	1,682,766	0	0
Summer .....	4,764,806	2,161,280	4,062,810	1,842,860	0	0
Winter II .....	1,949,962	884,488	N/A	N/A	N/A	N/A
Total .....	12,233,135	5,548,857	7,772,673	3,525,626	N/A	N/A

N/A= Not applicable.

Table 3 presents the commercial scup percent share, 2006 TAC, projected discards, 2006 initial quota (with and without the RSA deduction), and initial possession limits, by quota period. To achieve the commercial quotas, this

final rule implements a Winter I period (January–April) per-trip possession limit of 30,000 lb (13.6 mt), and a Winter II period (November–December) initial per-trip possession limit of 2,000 lb (907 kg). The Winter I per-trip possession

limit will be reduced to 1,000 lb (454 kg) when 80 percent of the commercial quota allocated to that period is projected to be harvested.

TABLE 3.—INITIAL COMMERCIAL SCUP QUOTA ALLOCATIONS FOR 2006 BY QUOTA PERIOD

Quota period	Percent share	Total allowable catch		Discards		Initial quota		Initial quota less RSA		Possession limits (per trip) <sup>1</sup>	
		lb	mt	lb	mt	lb	mt	lb	mt	lb	kg
Winter I .....	45.11	6,963,270	3,159	1,515,696	688	5,447,574	2,471	5,382,589	2,442	30,000	13,608
Summer .....	38.95	6,012,400	2,727	1,308,720	594	4,703,680	2,134	4,647,569	2,108	N/A	N/A
Winter II .....	15.94	2,460,530	1,116	535,584	243	1,924,946	873	1,901,983	863	2,000	907
Total <sup>2</sup> .....	100.00	15,436,200	7,002	3,360,000	1,524	12,076,200	5,478	11,932,142	5,412	N/A	N/A

<sup>1</sup> The Winter I possession limit will drop to 1,000 lb (454 kg) upon attainment of 80 percent of that period's allocation. The Winter II possession limit may be adjusted (in association with a transfer of unused Winter I quota to the Winter II period) via notification in the **Federal Register**.

<sup>2</sup> Metric tons and kilograms are as converted from pounds and may not necessarily add due to rounding. N/A = Not applicable.

As described in the November 17, 2005, proposed rule, the Council and the Commission's Summer Flounder, Scup, and Black Sea Bass Management Board (Board) recommended an increase

in the Winter II possession limit-to-rollover amount ratios, i.e., an increase from 500 lb (227 kg) to 1,500 lb (680 kg) per 500,000 lb (227 mt) of unused Winter I period quota transferred to the

Winter II period. NMFS is implementing this recommendation, as presented in Table 4, because it would increase the likelihood of achieving the Scup Winter II quota.

TABLE 4.—POTENTIAL INCREASE IN WINTER II POSSESSION LIMITS BASED ON THE AMOUNT OF SCUP ROLLED OVER FROM WINTER I TO WINTER II PERIOD

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

**Black Sea Bass**

For 2006, the target exploitation rate for black sea bass is 25 percent. The FMP specifies that the TAL associated with a given exploitation rate be allocated 49 percent to the commercial sector and 51 percent to the recreational sector. The recreational harvest limit is allocated on a coastwide basis. Recreational measures will be the subject of a separate rulemaking early in 2006.

This final rule implements the specifications contained in the November 17, 2005, proposed rule, i.e., an 8-million-lb (3,629-mt) black sea bass TAL. After deducting 178,956 lb (81 mt) of RSA for the four approved research projects, the TAL is divided into a commercial quota of 3,832,312 lb (1,738 mt) and a recreational harvest limit of 3,988,732 lb (1,809 mt). If a project is not approved by the NOAA Grants Office, the research quota associated with the disapproved proposal will be restored to the black sea bass TAL through publication in the **Federal Register**. Consistent with the revised quota setting procedures for the FMP, black sea bass overages are determined based upon landings for the period January-September 2005, plus any previously unaccounted for landings from January-December 2004. No adjustment to the 2006 commercial quota is necessary.

**Other Black Sea Bass Management Measures**

This final rule makes two changes to the regulations regarding the commercial black sea bass pot/trap fishery. First, NMFS increases the number of required vents in the parlor portion of the pot or trap from one to two. Black sea bass traps constructed of wooden laths may have, instead, escape

vents constructed by leaving spaces of at least 1.375 inches (3.49 cm) between two sets of laths in the parlor portion of the trap. Second, NMFS increases the minimum circle vent size for pots and traps from 2.375 inches (6.03 cm) to 2.5 inches (6.4 cm) in diameter. The purpose of these modifications is to allow for greater escapement of sublegal fish and other non-target species from black sea bass pots and traps. To allow fishery participants time to comply with the changes to the black sea bass pot and trap gear restrictions, the effective date of this change in regulations is January 1, 2007.

In addition, NMFS clarifies that, for black sea bass, total length measurement should not include the caudal fin tendril. NMFS amends the total length definition to exclude explicitly any caudal filament in the measurement of black sea bass.

**Comments and Responses**

NMFS received 58 written comments during the comment period for the November 17, 2005, proposed rule. Significant issues and concerns are summarized below and responded to as follows.

*Comment 1:* Several recreational fishery participants wrote in opposition of the proposed summer flounder TAL. Most of the commenters expressed concern about the potential effect of a TAL reduction on the recreational industry. These comments focused on the NJ recreational summer flounder fishery in particular. One commenter indicated that the commercial sector will maintain a portion of profits through higher fish prices, while the recreational sector and shore communities will be disproportionately affected. Some commenters stated that the commercial/recreational summer flounder TAL allocation scheme is

unfair and contrary to historical landings. Several commenters were concerned about commercial bycatch and opposed the 14-inch (35.6 cm) commercial minimum fish size for summer flounder.

*Response:* As of the December 7, 2005, Council meeting, projected recreational landings for 2005 indicate that, coastwide, summer flounder recreational landings must be reduced by 3.6 percent to achieve the 2006 recreational harvest limit. However, under conservation equivalency, which was recommended by the Council and Board, if approved by NMFS for the 2006 fishing year, MA, CT, and NY would be required to reduce summer flounder landings (in number of fish) in 2006 by 15 percent, 34 percent, and 30 percent, respectively. See Response 2 for more information regarding conservation equivalency. The Council plans to address summer flounder TAL allocation and bycatch issues, among others, in Amendment 15 to the FMP, and plans to begin public scoping on these issues in the spring of 2006.

*Comment 2:* Several commenters expressed concern about summer flounder recreational management measures, particularly for NJ.

*Response:* In the last several years, the Council and Board have recommended, and NMFS has approved, conservation equivalency for summer flounder, allowing each state to determine and implement the possession limit, minimum fish size, and fishing season appropriate to achieve the necessary state landings reduction. NMFS may waive Federal requirements regarding recreational management measures for federally permitted vessels landing summer flounder in a state with an approved conservation equivalency program; those vessels then are subject to the management measures in the state

in which they land. It is important to note that, in many cases, the relaxation of a minimum size would require a stricter possession limit or shorter fishing season.

As described above, the best available information indicates that no reduction in landings from the 2005 level will be necessary for NJ to achieve its landing target. Therefore, NMFS does not anticipate that NJ would implement more restrictive recreational management measures than those implemented for 2005. The recreational management measures for 2006 will be addressed in a separate rulemaking in early 2006, following receipt and review of the Council's recommendations.

*Comment 3:* Several commenters stated that the proposed summer flounder TAL reduction is unreasonable and unnecessary, that the stock assessment information is not strong enough to make such a decision, and that the status quo TAL (or the 33-million-lb (14,969-mt) TAL previously specified for 2006) should be maintained. Some supported the Council-recommended TAL of 26-million-lb (11,793 mt) for 2006–2008. Many of the commenters stated that they believe that the stock is healthy and noted the abundance of sublegal summer flounder (for NJ, less than 16.5 inches (41.9 cm)) as evidence. Some commenters cautioned that more restrictive recreational management measures may result in civil disobedience, especially regarding the minimum fish size.

*Response:* At the 41st Northeast Regional Stock Assessment Workshop, the Stock Assessment Review Committee (SARC) found that the 2005 stock assessment provided sound scientific advice for management. The SARC indicated that the overfishing of the summer flounder stock is occurring relative to the biological reference points established in Amendment 12 to the FMP, and as updated by the Northeast Fisheries Science Center's Southern Demersal Species Working Group. Under the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), NMFS is required to prevent overfishing. Further, a 2000 Federal Court Order requires that NMFS set a TAL that has at least a 50-percent probability of achieving the F target. Because the F target is set for a calendar year, NMFS maintains that setting a TAL greater than 23.59-million-lb (10,700 mt) would be contrary to the objectives of the FMP and the Federal Court Order.

*Comment 4:* Attorneys for two recreational fishing associations (NY and NJ) suggested that the 2000 Federal

Court Order is not controlling under the present set of facts and circumstances, i.e., it does not require NMFS to set the summer flounder TAL at 23.59-million-lb (10,700 mt), and urged NMFS to follow the Council's recommendation for a 26-million-lb (11,793-mt) summer flounder TAL for 2006–2008 in order to rebuild to the biomass target by 2010, while reducing major social and economic costs of cutting the TAL from 33-million-lb (14,969 mt) to 23.59-million-lb (10,700 mt). One of the commenters expressed concern about NMFS basing its TAL decision on the stock assessment, and NMFS not taking into greater consideration the potential economic impacts on fishing communities. The commenter contends that the stock assessment is based partially on unreliable Marine Recreational Fishery Statistics Survey and trawl survey data. One recreational fishery participant made similar comments regarding the Court decision.

*Response:* F targets are set on an annual basis and are based on the F that would result in the maximum yield per recruit ( $F_{max}$ ). Analysis indicates that a constant TAL of 26-million-lb (11,793 mt) for 2006 through 2008 has only a 25–30 percent probability of achieving the 2006 F target. After careful consideration of the 2000 Federal Court Order in *Natural Resources Defense Council, Inc., et al., v. Daley*, NMFS finds that it is necessary to set a summer flounder TAL that has at least a 50-percent probability of achieving the 2006 F target, for the 2006 fishing year. In that case, the Court held that “at the very least this means that “to assure” the achievement of the target F, to “prevent overfishing” and to “be consistent with” the fishery management plan, the TAL must have had at least a 50-percent chance of attaining an F of 0.24”, which was the  $F_{max}$  value at the time. Although Framework Adjustment 5 to the FMP allows for the setting of multi-year TALs, the framework did not contemplate setting TALs that are projected not to achieve the F target in each year. NMFS finds that implementing multi-year TALs that would not achieve the F target in any year fails to meet the probability standard contemplated in the Federal Court Order.

*Comment 5:* One commenter, representing a commercial seafood association, wrote in support of the proposed scup and black sea bass TALs, the RSA amounts, and commercial scup measures, and of a 26-million-lb (11,793-mt) summer flounder TAL for 2006–2008.

*Response:* This final rule implements the scup and black sea bass specifications and management measures as proposed. An explanation regarding NMFS' decision to implement the 23.59-million-lb (10,700-mt) TAL is provided above.

*Comment 6:* Representatives of three environmental organizations submitted a joint letter expressing concern about NMFS' reliance on a 50-percent probability standard in setting a TAL, given that F has historically been underestimated. The commenters noted that, in prior years, a 75-percent probability has been used. They also asked that the final rule elucidate how the 23.59-million-lb (10,700-mt) TAL is consistent with the rebuilding requirements of the Magnuson-Stevens Act. Lastly, the commenters asked that NMFS be prepared to consider alternative management approaches in the event that the Board approves a 26-million-lb (11,793-mt) TAL.

*Response:* Although NMFS did set TALs for 2005 and, preliminarily, for 2006, that were estimated to have a 75-percent probability of achieving the 2005 F target of 0.26, setting a TAL that is projected to have less than a 75-percent probability of achieving the target F is consistent with the 2000 Federal Court Order. The target F is derived according to the provisions in the FMP and is based on  $F_{max}$ , the proxy for the threshold F that would produce the maximum sustainable yield ( $F_{msy}$ ). The stock assessment completed in 2005 concluded that the summer flounder stock continues to rebuild, albeit at a slower rate than previously projected. The 2006 TAL of 23.59-million-lb (10,700 mt) represents a 22-percent decrease from the 2005 TAL of 30.3-million-lb (13,744 mt), and is intended to ensure that the stock continues to rebuild. This level of TAL will reduce removals and allow for greater growth of the biomass. This approach will allow for TAL specification that is expected to achieve the B target of 204-million-lb (92,532 mt) by the end of 2009.

On December 6, 2005, the Board approved a 2006 TAL of 23.59-million-lb (10,700 mt). Therefore, it is not necessary for NMFS to consider alternative measures to constrain the states to their commercial quotas.

*Comment 7:* Another commenter requested more restrictive measures (increased minimum fish sizes, lower TALs) for all three species.

*Response:* NMFS did not consider minimum fish sizes as part of this rulemaking. NMFS has reviewed the best available scientific information and the recommendations of the Council and selected management measures

designed to achieve the target F or exploitation rate for each fishery while minimizing the impact on fishery participants.

NMFS received several comments on issues not specifically related to this rulemaking, including: Some supporting more lenient minimum fish sizes for summer flounder recreational fishermen; some concerned about the impacts of release mortality on the summer flounder stock; a few expressing concern about composition of the Council; one suggesting that NMFS place observers on party boats rather than using random recreational surveys; one suggesting that no summer flounder size limits be implemented but that anglers be required to keep all fish up to the possession limit amount; one suggesting split minimum fish sizes for summer flounder; one suggesting required use of circle hooks for recreational summer flounder fishing; and one supporting designation of marine protected areas to allow the stocks to rebuild. While NMFS acknowledges that consideration of these concerns is important, this rule is not the proper mechanism to address these issues.

#### Classification

The Assistant Administrator for Fisheries, NOAA, finds good cause under 5 U.S.C. 553(d)(3) to waive the 30-day delayed effectiveness period for this rule. This action establishes annual quotas for the summer flounder, scup, and black sea bass fisheries and possession limits for the commercial scup fishery. Preparation of the proposed rule was dependent on the submission by the Council of the final EA/RIR/IRFA, which occurred in October 2005, in order for the agency to provide the public with information from the environmental and economic analyses, as required in rulemaking. The Council provided a supplement to the document in November 2005. NMFS published the proposed rule on November 17, 2005, with an abbreviated, 15-day comment period, in order to allow for finalization of the proposed regulatory changes by January 1, 2006. NMFS was unable to obtain the necessary data from the Council before October 2005 to finalize the specifications. Therefore, in order to implement the 2006 specifications before the beginning of the fishing season beginning January 1, 2006, NMFS must waive the 30-day delay in effectiveness.

If implementation of the specifications is delayed, NMFS will be prevented from carrying out its legal obligation to prevent overfishing of

these three species. The fisheries covered by this action will begin making landings on January 1, 2006. If a delay in effectiveness were to be required, and a quota were to be harvested during a delayed effectiveness period, the lack of effective quota specifications would prevent NMFS from closing the fishery. The scup and black sea bass fisheries are expected to be active at the start of the fishing season in 2006. In addition, this rule is necessary to keep summer flounder from being landed in Delaware, which is in a negative quota situation.

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

Included in this final rule is the FRFA prepared pursuant to 5 U.S.C. 604(a). The FRFA incorporates the IRFA, a summary of the significant issues raised by the public comments in response to the IRFA, and NMFS' responses to those comments, and a summary of the analyses completed to support the action. A copy of the EA/RIR/IRFA is available from the Council (see **ADDRESSES**).

The preamble to the proposed rule included a detailed summary of the analyses contained in the IRFA, and that discussion is not repeated here.

#### Final Regulatory Flexibility Analysis

##### *Statement of Objective and Need*

A description of the reasons why this action is being taken, and the objectives of and legal basis for this final rule are explained in the preambles to the proposed rule and this final rule and are not repeated here.

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

Several of the comment letters received on the proposed rule specifically addressed the potential economic impact of reduction of the summer flounder TAL on the recreational fishing industry, particularly in NJ. No changes to the proposed rule were required to be made as a result of public comments. For a summary of the comments received, and the responses thereto, refer to the "Comments and Responses" section of this preamble.

##### *Description and Estimate of Number of Small Entities to Which the Rule Will Apply*

The categories of small entities likely to be affected by this action include commercial and charter/party vessel owners holding an active Federal 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 2006 quotas could affect 2,162 vessels that held a Federal summer flounder, scup, and/or black sea bass permit in 2004. However, the more immediate impact of this final rule will likely be felt by the 906 vessels that actively participated (i.e., landed these species) in these fisheries in 2004.

##### *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*

Economic impacts are being minimized to the extent practicable with the quota specifications being implemented in this final rule, while remaining consistent with the target fishing mortality rates or target exploitation rates specified in the FMP. Specification of commercial quotas and possession limits is constrained by the conservation objectives of the FMP, and implemented at 50 CFR part 648 under the authority of the Magnuson-Stevens Act.

The economic analysis assessed the impacts of the various management alternatives. In the EA, the no action alternative is defined as follows: (1) No proposed specifications for the 2006 summer flounder, scup, and black sea bass fisheries would be published; (2) the indefinite management measures (minimum mesh sizes, minimum fish sizes, possession limits, permit and reporting requirements, etc.) would remain unchanged; (3) there would be no quota set-aside allocated to research in 2006; (4) the existing black sea bass pot and trap gear restrictions would remain in place; and (5) there would be no specific cap on the allowable annual landings in these fisheries (i.e., there would be no quotas). Implementation of the no action alternative would be inconsistent with the goals and objectives of the FMP, its implementing regulations, and the Magnuson-Stevens Act. In addition, the no action alternative would substantially complicate the approved management program for these fisheries, and would very likely result in overfishing of the resources. Therefore, the no action alternative is not considered to be a reasonable alternative to the preferred action and is not analyzed in the EA/RIR/IRFA/FRFA.

Alternative 1 consists of the harvest limits proposed by the Council for

summer flounder, and the Council and Board for scup and black sea bass. Alternative 2 consists of the most restrictive quotas (i.e., lowest landings) considered by the Council and the Board for all of the species. Alternative 3 consists of the status quo quotas,

which were the least restrictive quotas (i.e., highest landings) considered by the Council and Board for all three species. Although Alternative 3 would result in higher landings for 2006, it would also likely exceed the biological targets specified in the FMP.

Table 5 presents the 2006 initial TALs, RSA, commercial quotas adjusted for RSA, and preliminary recreational harvests for the fisheries under these three quota alternatives.

TABLE 5.—COMPARISON, IN LB (MT), OF THE ALTERNATIVES OF QUOTA COMBINATIONS REVIEWED

	Initial TAL	RSA	2005 commercial quota overage	Preliminary adjusted commercial quota	Preliminary recreational harvest limit
<b>Quota Alternative 1 (Preferred)</b>					
Summer Flounder .....	26.0 million .. (11,793) .....	355,762 (161)	191,181 (87)	15.2 million .. (6,893) .....	10.26 million. (4,653)
Scup .....	16.27 million (7,380) .....	184,690 (84)	0.000	11.93 million (5,412) .....	4.15 million. (1,884)
Black Sea Bass .....	8.0 million .... (3,629) .....	178,956 (81)	0.00	3.83 million .. (1,738) .....	3.99 million. (1,809)
<b>Quota Alternative 2 (Most Restrictive)</b>					
Summer Flounder .....	23.59 million (10,700) .....	355,762 (161)	191,181 (87)	13.75 million (6,237) .....	9.29 million. (4,217)
Scup .....	10.77 million (4,885) .....	184,690 (84)	0.00	7.65 million .. (3,468) .....	2.94 million. (1,333)
Black Sea Bass .....	7.5 million .... (3,402) .....	178,956 (81)	0.00	3.59 million .. (1,627) .....	3.73 million. (1,694)
<b>Quota Alternative 3 (Status Quo—Least Restrictive)</b>					
Summer Flounder .....	30.3 million .. (13,744) .....	355,762 (161)	191,181 (87)	17.78 million (8,063) .....	11.98 million. (5,433)
Scup .....	16.5 million .. (7,484) .....	184,690 (84)	0.00	12.12 million (5,496) .....	4.2 million. (1,905)
Black Sea Bass .....	8.2 million .... (3,719) .....	178,956 (81)	0.00	3.93 million .. (1,782) .....	4.09 million. (1,856)

For clarity, note that this final rule implements quotas contained in Alternative 1 for scup and black sea bass (the Council and Board’s preferred alternatives for these fisheries) and in Alternative 2 for summer flounder. Relative to 2005, the 2006 commercial quotas and recreational harvest limits contained in this action would result in a 22-percent decrease for each sector, respectively, a 2-percent decrease and 5-percent increase in scup landings for the commercial and recreational sectors, respectively, and a 3-percent decrease in black sea bass landings for both sectors; percentage changes associated with each alternative are discussed in the proposed rule. The measures contained in this action were chosen because they provide for the maximum level of landings that still achieve the fishing mortality and exploitation targets specified in the FMP.

The commercial scup possession limits and the amount of increase to the Winter II possession limit-to-rollover amount ratio were chosen as an appropriate balance between the economic concerns of the industry (i.e.,

landing enough scup to make the trip economically viable) and the need to ensure the equitable distribution of the quota over each period. Further, these actions are intended to help convert scup discards to landings, thereby improving the efficiency of the commercial scup fishery, and increasing the likelihood of achieving the Winter II quota.

The decision to require a second vent in the parlor portion of black sea bass traps and to increase the minimum size for circular vents to 2.5 inches (6.4 cm) in diameter was made based on recommendations from a 2005 black sea bass commercial industry workshop and is expected to reduce the mortality of sublegal fish, thereby improving the efficiency of the commercial black sea bass fishery (via increasing yields and amount of mature fish in the stock).

Finally, the revenue decreases associated with the RSA program are expected to be minimal, and are expected to yield important long-term benefits associated with improved fisheries data. It should also be noted that fish harvested under the RSAs

would be sold, and the profits would be used to offset the costs of research. As such, total gross revenue to the industry would not decrease substantially if the RSAs are utilized.

*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>.

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

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: December 22, 2005.

**James W. Balsiger,**

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

■ For the reasons stated in the preamble, 50 CFR part 648 is 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 § 648.2, add a second sentence to the definition of “Total Length” to read as follows:

**§ 648.2 Definitions.**

\* \* \* \* \*

*Total Length (TL)* \* \* \* For black sea bass, *Total Length (TL)* means the straight-line distance from the tip of the snout to the end of the tail (caudal fin), excluding any caudal filament, while the fish is lying on its side.

\* \* \* \* \*

■ 3. In § 648.144, revise paragraph (b)(2) to read as follows:

**§ 648.144 Gear restrictions.**

\* \* \* \* \*

(b) \* \* \*

(2) All black sea bass traps or pots must have two escape vents placed in lower corners of the parlor portion of the pot or trap that each comply with one of the following minimum size requirements: 1.375 inches by 5.75 inches (3.49 cm by 14.61 cm); a circular vent of 2.5 inches (6.4 cm) in diameter; or a square vent with sides of 2 inches (5.1 cm), inside measure; however, black sea bass traps constructed of wooden laths may have instead escape vents constructed by leaving spaces of at least 1.375 inches (3.49 cm) between two sets of laths in the parlor portion of the trap. These dimensions for escape vents and lath spacing may be adjusted pursuant to the procedures in § 648.140.

\* \* \* \* \*

[FR Doc. 05–24583 Filed 12–23–05; 11:56 am]

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**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

**50 CFR Part 679**

[Docket No. 041126332–5039–02; I.D. 122305A]

**Fisheries of the Exclusive Economic Zone Off Alaska; Groundfish in the Bering Sea and Aleutian Islands Management Area**

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

**ACTION:** Temporary rule; apportionment of reserves; request for comments.

**SUMMARY:** NMFS apportions amounts of the non-specified reserve of groundfish to certain target species in the Bering Sea and Aleutian Islands management area (BSAI). This action is necessary to account for previous harvest of the total allowable catch (TAC). It is intended to promote the goals and objectives of the fishery management plan for groundfish of the BSAI.

**DATES:** Effective December 29, 2005, through 2400 hrs, Alaska local time, December 31, 2005. Comments must be received no later than 1630, Alaska local time, January 12, 2006.

**ADDRESSES:** Send comments to Sue Salvesson, Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region, NMFS, Attn: Lori Durall. Comments may be submitted by:

- Mail to: P.O. Box 21668, Juneau, AK 99802;
- Hand delivery to the Federal Building, 709 West 9th Street, Room 420A, Juneau, Alaska;
- FAX to 907–586–7557;
- E-mail to [bsairel05b@noaa.gov](mailto:bsairel05b@noaa.gov) and include in the subject line of the e-mail comment the document identifier: bsairel05b; or
- Webform at the Federal eRulemaking Portal: [www.regulations.gov](http://www.regulations.gov). Follow the instructions at that site for submitting comments.

**FOR FURTHER INFORMATION CONTACT:** Josh Keaton, 907–586–7228.

**SUPPLEMENTARY INFORMATION:** NMFS manages the groundfish fishery in the BSAI exclusive economic zone according to the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens

Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

The Administrator, Alaska Region, NMFS, has determined that the 2005 initial TACs established in the 2005 and 2006 final harvest specifications for groundfish in the BSAI (70 FR 8979, February 24, 2005) for arrowtooth flounder, yellowfin sole, “other flatfish”, squid and rock sole in the BSAI need to be supplemented from the non-specified reserve in order to account for prior harvest.

Therefore, in accordance with § 679.20(b)(3), NMFS apportions amounts from the non-specified reserve to the TACs for the following species or species groups in the BSAI: 429 mt to arrowtooth flounder, 401 mt to yellowfin sole, 193 mt to “other flatfish”, 100 mt to squid and 227 to rock sole. This apportionment is consistent with § 679.20(b)(1)(ii) and does not result in overfishing of a target species because the revised initial TAC is equal to or less than the specification of the acceptable biological catch (70 FR 8979, February 24, 2005).

**Classification**

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA, (AA) finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) and § 679.20(b)(3)(iii)(A) as such a requirement is impracticable and contrary to the public interest. This requirement is impracticable and contrary to the public interest as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion and would delay the apportionment of the non-specified reserves of groundfish. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of December 22, 2005.

The AA also finds good cause to waive the 30-day delay in the effective date of this action under 5 U.S.C. 553(d)(3). This finding is based upon the reasons provided above for waiver of prior notice and opportunity for public comment.

Under § 679.20(b)(3)(iii), interested persons are invited to submit written comments on this action (see **ADDRESSES**) until January 12, 2006.