

independent contractor, authorized to act on behalf of the organization.

Principals means officers, directors, owners, partners, and, persons having primary management or supervisory responsibilities within a business entity (e.g., general manager; plant manager; head of a subsidiary, division, or business segment, and similar positions).

United States means the 50 States, the District of Columbia, and outlying areas.

(b) *Code of business ethics and conduct.* (1) Within 30 days after contract award, unless the contracting officer establishes a longer time period, the Contractor shall—

(i) Have a written code of business ethics and conduct; and

(ii) Provide a copy of the code to each employee engaged in performance of the contract.

(2) The Contractor shall—

(i) Exercise due diligence to prevent and detect criminal conduct; and

(ii) Otherwise promote an organizational culture that encourages ethical conduct and a commitment to compliance with the law.

(3) The Contractor shall notify, in writing, the agency Office of the Inspector General, with a copy to the Contracting Officer, whenever the Contractor has reasonable grounds to believe that a principal, employee, agent, or subcontractor of the Contractor has committed a violation of Federal criminal law in connection with the award or performance of this contract or any subcontract thereunder.

(c) *Business ethics awareness and compliance program and internal control system for other than small businesses.* This paragraph (c) does not apply if the Contractor has represented itself as a small business concern pursuant to the award of this contract. The Contractor shall establish the following within 90 days after contract award, unless the contracting officer establishes a longer time period—

(1) *An ongoing business ethics and conduct awareness and compliance program.*

(i) This program shall include reasonable steps to communicate periodically and in a practical manner the Contractor's standards and procedures and other aspects of the Contractor's business ethics awareness and compliance program and internal control system, by conducting effective training programs and otherwise disseminating information appropriate to an individual's respective roles and responsibilities.

(ii) The training conducted under this program shall be provided to the Contractor's principals and employees, and as appropriate, the Contractor's agents and subcontractors.

(2) An internal control system.

(i) The Contractor's internal control system shall—

(A) Establish standards and procedures to facilitate timely discovery of improper conduct in connection with Government contracts; and

(B) Ensure corrective measures are promptly instituted and carried out.

(ii) At a minimum, the Contractor's internal control system shall provide for the following:

(A) Assignment of responsibility at a sufficiently high level of the organization and

adequate resources to ensure effectiveness of the business ethics awareness and compliance program and internal control system.

(B) Reasonable efforts not to include within the organization principals whom due diligence would have exposed as having engaged in conduct that is illegal or otherwise in conflict with the Contractor's code of business ethics and conduct.

(C) Periodic reviews of company business practices, procedures, policies, and internal controls for compliance with the Contractor's code of business ethics and conduct and the special requirements of Government contracting, including—

(1) Monitoring and auditing to detect criminal conduct;

(2) Periodic evaluation of the effectiveness of the organization's business ethics awareness and compliance program and internal control system, especially if criminal conduct has been detected; and

(3) Periodic assessment of the risk of criminal conduct, with appropriate steps to design, implement, or modify the business ethics awareness and compliance program and the internal control system as necessary to reduce the risk of criminal conduct identified through this process.

(D) An internal reporting mechanism, such as a hotline, which allows for anonymity or confidentiality, by which employees may report suspected instances of improper conduct, and instructions that encourage employees to make such reports.

(E) Disciplinary action for improper conduct or for failing to take reasonable steps to prevent or detect improper conduct.

(F) Timely reporting, in writing, to the agency Office of the Inspector General, with a copy to the Contracting Officer, whenever the Contractor has reasonable grounds to believe that a principal, employee, agent, or subcontractor of the Contractor has committed a violation of Federal criminal law in connection with the award or performance of any Government contract performed by the Contractor or a subcontract thereunder; and

(G) Full cooperation with any Government agencies responsible for audit, investigation, or corrective actions.

(d) *Subcontracts.* (1) The Contractor shall include the substance of this clause, including this paragraph (d), in subcontracts that have a value in excess of \$5,000,000 and a performance period of more than 120 days, except when the subcontract—

(i) Is for the acquisition of a commercial item; or

(ii) Is performed outside the United States.

(2) In altering this clause to identify the appropriate parties, all reports of violation of Federal criminal law shall be directed to the agency Office of the Inspector General, with a copy to the Contracting Officer.

(End of clause)

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 071030625-7626-01]

RIN 0648-XC84

Fisheries of the Northeastern United States; Summer Flounder, Scup, and Black Sea Bass Fisheries; 2008 Summer Flounder, Scup, and Black Sea Bass Specifications; 2008 Research Set-Aside Projects

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

ACTION: Proposed specifications; request for comments.

SUMMARY: NMFS proposes specifications for the 2008 summer flounder, scup, and black sea bass fisheries and provides notice of three conditionally approved projects that will be requesting Exempted Fishing Permits (EFPs) as part of the Mid-Atlantic Fishery Management Council's (Council) Research Set-Aside (RSA) program. The implementing regulations for the Summer Flounder, Scup, and Black Sea Bass Fishery Management Plan (FMP) require NMFS to publish specifications for the upcoming fishing year for each of these species and to provide an opportunity for public comment. Furthermore, regulations under the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) require a notice to be published to provide interested parties the opportunity to comment on applications for EFPs. The intent of this action is to establish harvest levels that assure that the target fishing mortality rates (F) or exploitation rates specified for these species in the FMP are not exceeded and to allow for rebuilding of the stocks as well as to provide notice of EFP requests, all in accordance with the Magnuson-Stevens Act.

DATES: Comments must be received on or before December 3, 2007.

ADDRESSES: You may submit comments, identified by RIN 0648-XC84, by any one of the following methods:

- Electronic Submissions: Submit all electronic public comments via the Federal eRulemaking Portal <http://www.regulations.gov>.

- Mail and hand delivery: Patricia A. Kurkul, Regional Administrator, NMFS, Northeast Regional Office, One Blackburn Drive, Gloucester, MA 01930. Mark the outside of the envelope:

“Comments on 2008 Summer Flounder, Scup, and Black Sea Bass Specifications.”

- Fax: (978) 281-9135.

Instructions: All comments received are a part of the public record and will generally be posted to <http://www.regulations.gov> without change. All Personal Identifying Information (for example, name, address, etc.) voluntarily submitted by the commenter may be publicly accessible. Do not submit Confidential Business Information or otherwise sensitive or protected information.

NMFS will accept anonymous comments. Attachments to electronic comments will be accepted in Microsoft Word, Excel, WordPerfect, or Adobe PDF file formats only.

Copies of the specifications document, including the Environmental Assessment, Regulatory Impact Review, and Initial Regulatory Flexibility Analysis (EA/RIR/IRFA) and other supporting documents for the specifications are available from Daniel Furlong, Executive Director, Mid-Atlantic Fishery Management Council, Room 2115, Federal Building, 300 South Street, Dover, DE 19901-6790. These documents are also accessible via the Internet at <http://www.nero.noaa.gov>.

FOR FURTHER INFORMATION CONTACT: Michael Ruccio, Fishery Policy Analyst, (978) 281-9104.

SUPPLEMENTARY INFORMATION:

Background

The summer flounder, scup, and black sea bass fisheries are managed cooperatively by the Council and the Atlantic States Marine Fisheries Commission (Commission), 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 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, North Carolina) 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 commercial quotas and recreational harvest limits for the summer flounder, scup, and black sea bass 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 are removed by fishing during the year). Once the catch limits are established, they are divided into quotas based on formulas contained within the FMP.

As required by the FMP, a Monitoring Committee for each species, made up of members from NMFS, the Commission, and both the Mid-Atlantic and New England Fishery Management Councils, reviews the best available scientific information and recommends catch limits and other management measures that will achieve the target F or exploitation rate for each fishery. Consistent with the implementation of Framework Adjustment 5 to the FMP (69 FR 62818, October 28, 2004), each Monitoring Committee meets annually to recommend the Total Allowable Landings (TAL), unless the 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. Further, the TALs may be specified in any given year for the following 1, 2, or 3 years. The Council is not obligated to specify multi-year TALs, but is able to do so, depending on the information available and the status of the fisheries.

The Council's Demersal Species Committee and the Commission's Summer Flounder, Scup, and Black Sea Bass Management Board (Board) consider the Monitoring Committees' recommendations and any public comment and make their own recommendations. While the Board action is final, the Council's recommendations must be reviewed by NMFS to assure that they comply with FMP objectives and applicable law. The Council and Board made their recommendations at a joint meeting held August 7-9, 2007.

Explanation of Research Set-Aside (RSA)

Background: In 2001, regulations were implemented under Framework Adjustment 1 to the FMP to allow up to 3 percent of the TAL for each species to be set aside each year for scientific research purposes. For the 2008 fishing year, a Request for Proposals was published to solicit research proposals based upon the research priorities that

were identified by the Council (71 FR 77726, December 27, 2006).

NMFS has conditionally approved three research projects for the harvest of the portion of the quota that has been recommended by the Council to be set aside for research purposes. In anticipation of receiving applications for EFPs to conduct this research, the Assistant Regional Administrator for Sustainable Fisheries, Northeast Region, NMFS (Assistant Regional Administrator), has made a preliminary determination that the activities authorized under the EFPs issued in response to the approved RSA projects would be consistent with the goals and objectives of the FMP. However, further review and consultation may be necessary before a final determination is made to issue any EFP.

For informational purposes, these proposed specifications include a statement indicating the amount of quota that has been preliminarily set aside for research purposes (a percentage of the TAL for each fishery, not to exceed 3 percent, as recommended by the Council and Board), and a brief description of the RSA projects, including exemptions requested, and the amount of RSA requested for each project. The RSA amounts may be adjusted, following consultation with RSA applicants, in the final rule establishing the 2008 specifications for the summer flounder, scup, and black sea bass fisheries. If the total amount of RSA is not awarded, NMFS will publish a document in the **Federal Register** to restore the unused amount to the applicable TAL.

For 2008, the conditionally approved projects may collectively be awarded the following amounts of RSA: 233,192 lb (106 mt) of summer flounder; 214,000 lb (97 mt) of scup; and 85,790 lb (39 mt) of black sea bass. The projects may also be collectively awarded up to 50,000 lb (23 mt) of both *Loligo* squid and Atlantic bluefish.

2008 RSA Proposal Summaries: The University of Rhode Island submitted a proposal to conduct a fifth year of work in a fishery-independent scup survey that would utilize unvented fish traps fished on hard bottom areas in southern New England waters to characterize the size composition of the scup population. Survey activities would be conducted from May 15 through October 15, 2008, at 10 rocky bottom study sites located offshore, where there is a minimal scup pot fishery and no active trawl fishery, and at two scup spawning ground sites. Up to two vessels would conduct the research survey. Sampling would occur off the coasts of Rhode Island and southern

Massachusetts. Up to three vessels would harvest the RSA during the period January 1 through December 31, 2007. The principle investigators have requested exemptions from trip limits, gear requirements (excluding marine mammal avoidance and/or release devices), and closed seasons for harvest of RSA species. The preliminary RSA requested for this project is 2,000 lb (907 kg) of summer flounder; 64,000 lb (29 mt) of scup; and 24,000 lb (11 mt) of black sea bass.

The Virginia Institute of Marine Science (VIMS) submitted a proposal to conduct a near-shore trawl survey in Mid-Atlantic waters between Gay Head, Massachusetts, and Cape Hatteras, North Carolina, including both Block Island and Rhode Island Sounds. A stratified random sampling of approximately 200 stations will occur in depths between 18–60 feet (8–18 m). The function of the survey would be to provide stock assessment data for summer flounder, scup, black sea bass, Loligo squid, butterfish, Atlantic bluefish, several species managed by the Atlantic States Marine Fisheries Commission (Commission) such as weakfish and Atlantic croaker, and unmanaged forage species. The research aspects of the trawl survey will be conducted by one VIMS scientific research vessel operating under the control of VIMS personnel. This vessel will operate under a Letter of Authorization (LOA) as provided for by the specific exemption for scientific research activities found at 50 CFR 600.745. Up to 35 vessels will harvest the RSA between January 1 through December 31 during commercial fishing operations, except that these vessels have requested exemptions for closed seasons and trip limits to harvest the RSA allocated to the project. The preliminary RSA requested by this project is 150,000 lb (68 mt) of both summer flounder and scup and 50,000 lb (23 mt) each of black sea bass, Atlantic bluefish, and *Loligo* squid.

The National Fisheries Institute (NFI) has submitted a proposal to conduct an evaluation of discard mortality for summer flounder in trawl fisheries. This study is designed to work in concert with a previous summer flounder mortality RSA-funded study conducted in 2007. Combined sources of mortality and injury quantification that occur as part of trawling, tracking and tagging, and scuba diver observation will be utilized to provide an estimate of trawl-related mortality. Research sampling will be conducted adjacent to Little Egg Inlet off the New Jersey coast in September and October 2008. One vessel will conduct the research

activities and may simultaneously participate in harvesting RSA, if the season for summer flounder is closed or if more fish, above those needed for the research activities, are caught than are permitted by possession limits. The principle investigators have requested exemption from the commercial summer flounder minimum size so that fish smaller than 14 inches (35.5 cm) may be temporarily retained to assess viability and to affix tags and data transmitters. Up to 35 vessels will harvest the RSA between January 1 through December 31 under during commercial fishing operations, except that these vessels have requested exemptions for closed seasons and trip limits to harvest the RSA allocated to the project. The preliminary RSA requested by this project is 81,192 lb (37 mt) of summer flounder 50,000 lb (23 mt) and 11,790 lb (5 mt) of black sea bass.

Regulations under the Magnuson-Stevens Act require publication of this notification to provide interested parties the opportunity to comment on applications for proposed EFPs.

Explanation of Quota Adjustments Due to Quota Overages

This action proposes commercial quotas based on the proposed TALs and Total Allowable Catches (TACs) and the formulas for allocation contained in the FMP. In 2002, NMFS published final regulations to implement a regulatory amendment (67 FR 6877, February 14, 2002) that revised the way in which the commercial quotas for summer flounder, scup, and black sea bass are adjusted if landings in any fishing year exceed the quota allocated (thus resulting in a quota overage). If NMFS approves a different TAL or TAC at the final specifications stage (i.e., in the final rule), the commercial quotas will be recalculated based on the formulas in the FMP. Likewise, if new information indicates that overages have occurred and deductions are necessary, NMFS will publish notice of the adjusted quotas in the **Federal Register**. NMFS anticipates that the information necessary to determine whether overage deductions are necessary will be available by the time the final specifications are published. The commercial quotas contained in these proposed specifications for summer flounder, scup, and black sea bass do not reflect any deductions for overages. The final specifications, however, will contain quotas that have been adjusted consistent with the procedures described above.

Summer Flounder

The Southern Demersal Working Group (SDWG), a technical stock assessment group composed of personnel from the Northeast Fisheries Science Center (NEFSC), NMFS Northeast Regional Office, Council, Commission, state marine fisheries agencies, academia, and an independent participant with stock assessment expertise selected by the Council, met June 19–20, 2007, to update the summer flounder assessment through 2006/2007 based on the most recent available research survey and fisheries catch data. This was a routine annual update, as called for by the FMP. The update utilized the model and methods evaluated and recommended for continued use in the most recent peer review conducted by the NMFS Office of Science and Technology Division (S&T) in 2006.

The 2007 SDWG update shows that summer flounder are overfished and that overfishing occurred in 2006, the year for which the most recent, complete fishery-dependent data are available. The F estimated for 2006 is 0.35, a reduction from the estimated F of 0.47 for 2005, but still above the F_{MAX} threshold of 0.28. F_{MAX} is the level of fishing mortality that produces maximum yield per recruit. The updated 2007 assessment confirms that summer flounder have been subject to overfishing each year of the rebuilding period that began in 2000. Spawning stock biomass (SSB) in 2006 was estimated to be 93.0 million lb (42,184 mt), below the S&T updated biomass threshold of $\frac{1}{2}$ SSB_{MSY} = 98.6 million lb (44,724 mt). F_{MSY} is the fishing mortality rate that, if applied constantly, would result in maximum sustainable yield (MSY). When $F > F_{MAX}$, overfishing is considered to be occurring, and when $B < \frac{1}{2} B_{MSY}$, the stock is considered overfished. The arithmetic mean recruitment from 1982 to 2006 is 37 million fish at age 0, with a median of 33 million fish. The 2006 year class is currently estimated to be about 30 million fish.

The Virtual Population Analysis (VPA) model used in the summer flounder assessment tends to underestimate F and overestimate stock biomass in the most recent years of the analysis until those data stabilize as new data are added in subsequent years. The model has also produced variable patterns for recruitment. Typically, the magnitude of the retrospective patterns get smaller after 5 to 7 years and completely stabilizes (converges) after 10 years of data have been added to the model (i.e., the estimates of F , SSB, and

recruitment for the year 1995 have gradually stabilized over time and are now expected not to change when new data are added in successive years' updates).

Over the last 3 years, the annual retrospective increase in fishing mortality has ranged from +20 to +40 percent. Over the last 3 years, the annual retrospective decrease in SSB has ranged from -8 to -22 percent. Retrospective analysis shows no definitive trend in estimation of the abundance of age 0 fish in the most recent years. Over the last 3 years, the annual retrospective change in recruitment has been variable and ranged from -7 to +13 percent. These patterns are likely the result of an underestimation of the true catch, due to discards and/or unreported landings. The impact for management, given these persistent retrospective patterns, is that the summer flounder stock is increasing at a lower rate and is currently at a smaller size than previously forecast.

The regulations state that the Council shall recommend, and NMFS shall implement, measures (including the TAL) necessary to achieve, with at least a 50-percent probability of success, a fishing mortality rate that produces the maximum yield per recruit (F_{MAX}). This requirement is also consistent with a 2000 Federal Court Order (*Natural Resources Defense Council v. Daley*, Civil No. 1:99 CV 00221 (JLG)) regarding the setting of the summer flounder TAL. Summer flounder are under a rebuilding program whose timeline for completion has been extended from January 1, 2010, to no later than January 1, 2013, by section 120(a) of the 2006 reauthorized Magnuson-Stevens Act.

It has been evident in recent years that setting specifications designed to satisfy the minimum requirement of the regulations (i.e., a 50-percent probability of achieving F_{MAX}) is insufficient to prevent overfishing and to ensure that rebuilding will occur within the required timeframe. For the 2007 fishery, NMFS implemented a TAL that differed from the Council recommendation. The 2007 NMFS implemented TAL had a more precautionary 75-percent probability of achieving an F rate calculated to ensure that stock rebuilding will occur within the remaining years of the rebuilding time frame. This F rate, $F_{REBUILD}$, was set at 0.203, which is lower than F_{MAX} (0.28). It will not be possible to estimate if the 2007 $F_{REBUILD}$ target was successful in constraining fishing mortality at or below the 0.203 level and in ending overfishing (i.e., $F < 0.28$) until mid-year in 2008, after the final 2007 recreational and commercial fisheries

data have been compiled, audited, and are available for analysis.

The SDWG 2007 assessment update analysis indicated a 2008 TAL of 17.5 million lb (7,938 mt) at an $F_{REBUILD}=0.199$ is forecast to rebuild the stock to the S&T recommended $SSB_{MSY}=197.2$ million lb (89,450 mt) by Nov 1, 2012, and to a Total Stock Biomass (TSB) =207.3 million lb (94,031 mt) by Jan 1, 2013. Maintaining the $F_{REBUILD}=0.199$ rate for the remaining rebuilding period years of 2009–2012 is forecast by the SDWG's 2007 update to achieve the required stock rebuilding for summer flounder by the January 1, 2013, deadline, with at least a 50-percent probability of success. As such, this is the 2008 TAL analytical baseline that satisfies the minimum requirements of the Magnuson-Stevens Act rebuilding requirements and is consistent with the FMP regulations and Court rulings regarding probabilities for success. A TAL at this level is more conservative than the regulatory requirement that TAL recommendations have at least 50 percent probability of achieving F_{MAX} (i.e., $F_{MAX}=0.28$, the SDWG baseline TAL is set below this at the $F_{REBUILD}=0.199$ level).

The Summer Flounder Monitoring Committee evaluated a range of options, derived from the SDWG's baseline, for the 2008 TAL and their associated probabilities for constraining fishing mortality within the $F_{REBUILD}$ target. In addition, the Monitoring Committee evaluated TALs and F target probabilities provided by Council staff wherein the 2008 $F_{REBUILD}$ value of 0.199 would be corrected in an attempt to compensate for the retrospective pattern which has resulted from the VPA analysis. Council staff applied a 1-year correction to the $F_{REBUILD}$ target by reducing the 2008 $F_{REBUILD}$ by 28-percent from 0.199 to 0.143. Council staff derived the correction to $F_{REBUILD}$ by using the most recent 3-year average underestimation of F in the model (i.e., 28 percent). The TAL and probability options recommended by Council staff ranged from a low of 11.64 million lb (5,280 mt) with a 75-percent probability of achieving the corrected 2008 $F_{REBUILD}=0.143$, to a high of 15.77 million lb (7,153 mt) that has a 75-percent probability of achieving the uncorrected 2008 $F_{REBUILD}=0.199$.

The Monitoring Committee recommended a TAL within the range of 12.90 to 11.64 million lb (5,851 mt to 5,280 mt) to the Council. This range was based on the corrected $F_{REBUILD}$ value (0.143) and would achieve a 50- to 75-percent probability of achieving the corrected F, respectively. Both Council staff and the Monitoring Committee

assumed in their analysis of the adjusted $F_{REBUILD}$ value for 2008 that the resulting TAL would be sufficient to correct, within 1 year, the course of the summer flounder rebuilding program provided the 2008 F target is not exceeded. The Monitoring Committee projections utilized for rebuilding years 2009–2012 assumes that the retrospective pattern ceases to occur. The TAL range proposed by the Monitoring Committee is more conservative than the regulatory requirements of the FMP and the statutory requirements of the Magnuson-Stevens Act.

The Council and the Board discussed the Monitoring Committee recommendation at the August Council meeting. The Council discussed at length the feasibility of achieving the rebuilding biomass target within the rebuilding period given recent recruitment levels and environmental factors, the retrospective patterns that arise from the VPA modeling approach, and the requirements of National Standard 1 that mandates management measures shall prevent overfishing while achieving optimum yield on a continuing basis and National Standard 8 that guides Councils to minimize, to the extent practicable, adverse impacts of conservation and management measures on fishing communities. The Council and the Board considered the various alternatives presented to them, and considered the need to rebuild the stock within the required timeframe, the needs of fishery participants, and the need to act with precaution in the face of uncertainty regarding the retrospective patterns. The Council adopted a 15.77-million-lb (7,153 mt) TAL that has a 75-percent probability of constraining mortality to the $F_{REBUILD}$ target of 0.199 in 2008. As such, the Council's recommended TAL exceeds the regulatory requirement for success by employing a probability greater than 50 percent. In addition, the F target is the lower $F_{REBUILD}$ (0.199) value as opposed to the minimally required F_{MAX} value (0.28). The Council and Board agreed to set aside 233,192 lb (106 mt) of the proposed TAL for research. After deducting the RSA, the TAL would be divided into a commercial quota (60 percent) and a recreational harvest limit (40 percent). All other management measures were recommended to remain status quo.

The Commission is expected to maintain the voluntary measures currently in place to reduce regulatory discards that occur as a result of landing limits established by the states. The Commission established a system whereby 15 percent of each state's quota

would be voluntarily set aside each year to enable vessels to land an incidental catch allowance after the directed fishery 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 also ensuring that the state's

overall quota is not exceeded. These Commission set-asides are not included in these proposed specifications because these measures are not authorized by the FMP and NMFS does not have authority to implement them.

Table 1 presents the proposed allocations by state, with and without the commercial portion of the RSA deduction. These state quota allocations

are preliminary and are subject to reductions if there are overages of states quotas carried over from a previous fishing year (using the landings information and procedures described earlier). Any commercial quota adjustments to account for overages will be included in the final rule implementing these specifications.

TABLE 1. 2007 PROPOSED INITIAL SUMMER FLOUNDER STATE COMMERCIAL QUOTAS

State	Percent Share	Commercial Quota		Commercial Quota less RSA ¹	
		lb	kg ²	lb	kg ²
ME	0.04756	4,500	2,041	4,434	2,011
NH	0.00046	44	20	43	19
MA	6.82046	645,352	292,732	635,809	288,403
RI	15.68298	1,483,924	673,108	1,461,981	663,143
CT	2.25708	213,565	96,873	210,407	95,441
NY	7.64699	723,558	328,206	712,859	323,348
NJ	16.72499	1,582,519	717,830	1,559,118	707,204
DE	0.01779	1,683	764	1,658	752
MD	2.03910	192,940	87,517	190,087	86,223
VA	21.31676	2,016,992	914,892	1,987,166	901,363
NC	27.44584	2,596,925	1,177,945	2,558,524	1,160,527
Total ³	100.00001	9,462,001	4,291,964	9,322,086	4,228,435

¹ Preliminary Research Set-Aside amount is 233,192 lb (106 mt).

² Kilograms are as converted from pounds and do not sum to the converted total due to rounding.

³ Rounding of quotas results in totals exceeding 100 percent.

Scup

Scup was last formally assessed in June 2002 at the 35th Northeast Regional SAW. At that time, SARC 35 indicated that the species was no longer overfished, but that stock status with respect to overfishing could not be evaluated. The stock is considered overfished when the 3-year average of scup SSB is less than the biomass threshold (2.77 kg/tow; the maximum NEFSC spring survey 3-year average of SSB).

On August 18, 2005, NMFS notified the Council that the scup stock had been designated as overfished and that, within 1 year of that notice, an amendment or proposed regulations for the scup fishery to end overfishing and to rebuild the stock must be prepared in accordance with the Magnuson-Stevens Act. In response, the Council developed and submitted for Secretarial review, Amendment 14 to the FMP (Amendment 14) to rebuild, during a 7-year period, the scup stock from an overfished condition to a biomass level

(B) associated with MSY or (BMSY), as required by the Magnuson-Stevens Act. The Secretary approved Amendment 14 on July 3, 2007. The final rule implementing the amendment published in the **Federal Register** on July 23, 2007 (72 FR 40077). The rebuilding program begins on January 1, 2008 (i.e., year one of the 7-year plan). The Amendment 14 rebuilding plan applies a constant F of 0.10 in each year of the 7-year rebuilding period.

The 2006 NEFSC Spring SSB 3-year average (2005–2007) index value of 0.76 kg/tow remains below the minimum biomass threshold of 2.77 kg/tow. The scup stock is considered overfished. The NEFSC spring survey index increased significantly in 2004 to 1.85 kg/tow relative to the low value of 0.15 kg/tow derived in 2003. In 2005, the spring index dropped to 0.10 kg/tow; however, in 2006 this value increased to 2.04 kg/tow. The 2006 index was the highest value in the spring survey since 1978, excluding the high value in 2002. In 2007, this value dropped to 0.14 kg/tow.

The FMP specifies that the 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 Monitoring Committee recommended a 2008 TAL of 7.34 million lb (3,329 mt) to achieve the target exploitation rate of 9 percent (F=0.10). The discard estimates used by the Monitoring Committee in the 2008 TAC calculations were based on the average discards of 2005 and 2006 for the commercial and recreational fisheries. This discard estimate is 2.56 million lb (1,161 mt), resulting in a TAC

of 9.90 million lb (4,491 mt). The Council and the Board accepted the Monitoring Committee's recommendations for 2008. NMFS is proposing to implement the Council and Board recommendation as it complies with the provisions of the Amendment 14 rebuilding program. This TAL is a 38.8-percent decrease from the 2007 TAL of 12.0 million lb (5,443 mt).

The commercial TAC would be 7.72 million lb (3,502 mt) and the recreational TAC would be 2.18 million lb (989 mt). After deducting estimated discards (2.26 million lb (1,025 mt) for

the commercial sector and 0.30 million lb (136 mt) for the recreational sector), the initial commercial quota would be 5.46 million lb (2,477 mt) and the recreational harvest limit would be 1.88 million lb (853 mt). The Council and Board agreed to set aside 214,000 lb (97 mt) of the TAL for research activities. Deducting this RSA would result in a commercial quota of 5.30 million lb (2,404 mt) and a recreational harvest limit of 1.82 million lb (826 mt).

The proposed 2008 specifications would maintain the status quo base scup possession limits, i.e., 30,000 lb

(13,608 kg) for Winter I, to be reduced to 1,000 lb (454 kg) when 80 percent of the quota is projected to be reached, and 2,000 lb (907 kg) for Winter II).

Table 2 presents the 2008 commercial allocation recommended by the Council, with and without the preliminary 214,000-lb (97-mt) RSA deduction. These 2008 allocations are preliminary and may be subject to downward adjustment due to 2006 overages in the final rule implementing these specifications, based on the procedures for calculating overages described earlier.

TABLE 2. 2008 PROPOSED INITIAL TAC, COMMERCIAL SCUP QUOTA, AND POSSESSION LIMITS

Period	Percent	TAC in lb (mt)	Discards in lb (mt)	Commercial Quota in lb (mt)	Commercial Quota less RSA in lb (mt)	Possession Limits in lb (kg)
Winter I	45.11	3,483,394(1,580)	1,019,486(462)	2,463,908(1,118)	2,367,373(1,074)	30,000 ¹ (13,608)
Summer	38.95	3,007,719(1,364)	880,270(399)	2,127,449(965)	2,044,096(927)	n/a
Winter II	15.94	1,230,887(558)	360,244(163)	870,643(395)	836,531(379)	2,000(907)
Total ²	100.00	7,722,000(3,503)	2,260,000(1,025)	5,462,000(2,478)	5,248,000(2,380)	

¹The Winter I landing limit would drop to 1,000 lb (454 kg) upon attainment of 80 percent of the seasonal allocation.

²Totals subject to rounding error.

n/a-Not applicable

The final rule to implement Framework 3 to the FMP (68 FR 62250, November 3, 2003) implemented a process, for years in which the full Winter I commercial scup quota is not

harvested, to allow unused quota from the Winter I period to be rolled over to the quota for the Winter II period. As shown in Table 3, the proposed specifications would maintain the status

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

TABLE 3. 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	kg	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

Amendment 12 to the FMP indicated that the black sea bass stock, which was determined by SARC 27 to be overfished in 1998, could be rebuilt to the target biomass within a 10-year period, i.e., by 2010. The current target exploitation rate is based on the current estimate of F_{MAX}, or 0.33 (25.6 percent). The northern stock of black sea bass was last assessed at the 43rd SAW in June 2006. The SARC 43 Panel did not consider the

stock assessment to provide an adequate basis to evaluate stock status against the biological reference points, but did not recommend any other reference points to replace them.

The most recent Center spring survey results indicate that the exploitable biomass of black sea bass decreased in 2006. The 2006 biomass index, i.e., the 3-year average exploitable biomass for 2005 through 2007, is estimated to be 0.6 kg/tow, below the threshold biomass value of 0.976 kg/tow. Based on these

results, if the biological reference points in the FMP are applied, black sea bass once again would be considered to be overfished.

Because the estimate of exploitable biomass is based on a 3-year average, the actual estimate for 2007 will not be derived until the spring 2008 survey results are available; if it is 0.263 (3-year moving average for 2006), and assuming an exploitation rate of 21 percent in 2003, the TAL associated with the target exploitation rate would be 3.75 million

lb (1,701 mt). However, if the 2008 estimate is 0.328 (3-year moving average for 2005), the TAL associated with the target exploitation rate would be 4.68 million lb (2,123 mt). Given the uncertainty in the black sea bass survey estimates and the potential underestimation of the 2003 exploitation rate (21 percent), the Monitoring Committee agreed with the Council staff recommendation to set a 1-year TAL of 4.22 million lb (1,914 mt). The Council and Board accepted the Monitoring Committee recommendation. This TAL would represent a 15.6-percent decrease from 2007.

NMFS proposes to implement a 2008 black sea bass TAL of 4.22 million lb (1,194 mt), consistent with the Council and Board recommendations. 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; therefore, the initial TAL would be allocated 2.07 million lb (939 mt) to the commercial sector and 2.15 million lb (975 mt) to the recreational sector. The Council and Board also agreed to set aside 85,790 lb (39 mt) of the black sea bass TAL for research activities. After deducting the RSA the TAL would be divided into a commercial quota of 2,025,763 lb (919 mt) and a recreational harvest limit of 2,108,447 lb (956 mt), as specified in the FMP.

Classification

Pursuant to section 304 (b)(1)(A) of the Magnuson-Stevens Act, the NMFS Assistant Administrator has determined that this proposed rule is consistent

with the Summer Flounder, Scup, and Black Sea Bass FMP, other provisions of the Magnuson-Stevens Act, and other applicable law, subject to further consideration after public comment.

These proposed specifications are exempt from review under Executive Order 12866.

An IRFA was prepared, as required by section 603 of the Regulatory Flexibility Act (RFA). The IRFA describes the economic impact these proposed specifications, if adopted, would have on small entities. A description of the action, why it is being considered, and the legal basis for this action are contained in the preamble to this proposed rule. A copy of this analysis is available from NMFS (see **ADDRESSES**). A summary of the analysis follows.

The economic analysis assessed the impacts of the various management alternatives. The no action alternative is defined as follows: (1) No proposed specifications for the 2008 summer flounder, scup, and black sea bass fisheries would be published; (2) the indefinite management measures (minimum mesh sizes, minimum sizes, possession limits, permit and reporting requirements, etc.) would remain unchanged; (3) there would be no quota set-aside allocated to research in 2008; (4) the existing gear restrictive areas would remain in place for 2008; 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. Under the no action alternative, the fisheries would operate without an identified cap on allowable landings because the quotas implemented for 2007 expire on December 31, 2007, and there are no provisions to roll-over those quota provisions into 2008 if specifications are not published for the year. Therefore, the no action alternative is not considered to be a reasonable alternative to the preferred action.

The Council prepared economic analyses for Alternatives 1 through 3. Alternative 1 consists of the harvest limits proposed by the Council and the Board for all three species. Alternative 1 contains the Monitoring Committee's recommended harvest limits 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 2 contains the harvest limit recommended by the Monitoring Committee for summer flounder. 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.

Table 4 presents the 2008 initial TALs, RSA, commercial quotas adjusted for RSA, and preliminary recreational harvests for the fisheries under these three quota alternatives.

TABLE 4. COMPARISON, IN LB (MT), OF THE 2008 SUMMER FLOUNDER, SCUP, AND BLACK SEA BASS QUOTA ALTERNATIVES

	Initial TAL	RSA ²	Preliminary Adjusted Commercial Quota ¹	Preliminary Recreational Harvest Limit
Quota Alternative 1 (Council's Preferred)				
Summer Flounder	15.77 million(7,150)	233,192(106)	9.32 million(4,230)	6.21 million(2,820)
Scup	7.34 million(3,330)	214,000(97)	5.30 million(2,400)	1.82 million(830)
Black Sea Bass	4.22 million(1,910)	85,790(39)	2.03 million(920)	2.11 million(960)
Quota Alternative 2 (Most Restrictive)				
Summer Flounder	11.64 million(5,280)	233,192(106)	6.84 million(3,100)	4.56 million(2,070)
Scup	5.02 million(2,280)	151,000(68)	3.54 million(1,610)	1.33 million(600)
Black Sea Bass	3.75 million(1,700)	85,790(39)	1.80 million(820)	1.87 million(850)
Quota Alternative 3 (Status Quo-Least Restrictive)				
Summer Flounder	17.112 million(7,760)	233,192(106)	10.13 million(4,590)	6.75 million(3,060)
Scup	12.00 million(5,440)	214,000(97)	8.94 million(4,060)	2.85 million(1,290)

TABLE 4. COMPARISON, IN LB (MT), OF THE 2008 SUMMER FLOUNDER, SCUP, AND BLACK SEA BASS QUOTA ALTERNATIVES—Continued

	Initial TAL	RSA ²	Preliminary Adjusted Commercial Quota ¹	Preliminary Recreational Harvest Limit
Black Sea Bass	5.00 million(2,270)	85,790(39)	2.41 million(1,090)	2.51 million(1,140)

¹ Note that preliminary quotas are provisional and may change to account for overages of the 2007 quotas.

² Conditionally approved RSA amount or 3 percent of the alternative's TAL, whichever is less.

Note: Metric tons are as converted from pounds as shown and are subject to rounding error.

Table 5 presents the percent change associated with each of these commercial quota alternatives (adjusted for RSA) compared to the final adjusted quotas for 2007.

TABLE 5. PERCENT CHANGE ASSOCIATED WITH 2008 ADJUSTED COMMERCIAL QUOTA ALTERNATIVES COMPARED TO 2007 COMMERCIAL ADJUSTED QUOTAS

Species	Total Aggregate Changes Including RSA		
	Quota Alternative 1 (Council Preferred)	Alternative 2 (Most Restrictive)	Quota Alternative 3 (Least Restrictive/Status Quo)
Summer Flounder	-7.8%	-32.0%	+ 1.3%
Scup	-38.8%	-58.2%	+ 1.3%
Black Sea Bass	-15.6%	-25.0%	+ less than 1.0%

The total gross revenue for the individual vessels that would be directly regulated by this action is less than \$ 4.0 million each. All vessels that would be impacted by this proposed rulemaking are therefore considered to be small entities and, thus, there would be no disproportionate impacts between large and small entities as a result. 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 proposed 2007 quotas could affect 2,253 vessels that held a Federal summer

flounder, scup, and/or black sea bass permit in 2006. However, the more immediate impact of this rule will likely be felt by the 903 vessels that actively participated in these fisheries (i.e., landed these species) in 2006.

Commercial Fishery Impacts

The Council estimated the total revenues derived from all species landed by each vessel during calendar year 2007 to determine a vessel's dependence and revenue derived from a particular species. This estimate provided the base from which to compare the effects of the proposed quota changes from 2007 to 2008.

Alternative 1 (Council's Preferred Measures): The analysis of the harvest limits in Alternative 1 indicated that

these harvest levels would result in 2008 revenue losses, relative to 2007, of less than 5 percent for 115 vessels and greater than or equal to 5 percent for 733 vessels. More specifically, vessels are projected to incur revenue reductions as follows: Change of 5–9 percent, 374 vessels; 10–19 percent, 249 vessels; 20–29 percent, 29 vessels; 30–39 percent, 29; 40–49 percent, 19 vessels, and greater than or equal to 50 percent, 2 vessels. Most commercial vessels showing revenue reduction of greater than 5 percent are concentrated in NJ, RI, NC, NY and MA.

The Council also examined the level of ex-vessel revenues for the impacted vessels to assess further impacts the impacts of Alternative 1 (Table 6).

TABLE 6. COMPARISON OF ALTERNATIVE 1 IMPACTS TO VESSEL TOTAL GROSS SALES BY REVENUE REDUCTION CATEGORY

Revenue Reduction Range (Percent)	No. of Vessels in Range	2007 Total Gross Sales (Ex-Vessel Revenues)			
		\$1,000 or Less		\$10,000 or Less	
		No. of Vessels	Percent in Range	No. of Vessels	Percent in Range
5 to 9	374	149	40	63	17
10 to 19	249	82	33	138	55
20 to 29	60	8	13	17	28
30 to 39	29	8	28	16	55
40 to 49	19	10	53	17	89

TABLE 6. COMPARISON OF ALTERNATIVE 1 IMPACTS TO VESSEL TOTAL GROSS SALES BY REVENUE REDUCTION CATEGORY—Continued

Revenue Reduction Range	2007 Total Gross Sales (Ex-Vessel Revenues)				
	No. of Vessels in Range	\$1,000 or Less		\$10,000 or Less	
		No. of Vessels	Percent in Range	No. of Vessels	Percent in Range
(Percent)					
Greater than or equal to 50	2	2	100	0	0
Total	733	259	35	424	58

Based on the information in Table 6, the dependence on fishing for some of these vessels is likely small as 35 percent of vessels incurring revenue reductions of gross sales equal to or less than \$1,000 and 58 percent of impacted vessels had gross sales of less than or equal to \$10,000 for 2006.

The Council also analyzed changes in total gross revenues that would occur as a result of the quota alternatives. Alternative 1 would decrease total revenues for summer flounder by approximately \$0.84 million, scup by \$3.20 million, and black sea bass \$0.88 million, relative to expected revenues earned from the 2007 quotas.

The overall reduction in ex-vessel gross revenue associated with the potential changes in quotas in 2008 relative to the quotas implemented in 2007 is approximately \$4.92 million (using 2006 ex-vessel prices) under Alternative 1. Assuming that the decrease in total ex-vessel gross revenue

associated with the proposed rule for each fishery is distributed equally among the vessels that landed those species in 2006 (the last full year of data availability), the average decrease in gross revenue per vessel associated with the preferred quota would be \$1,143 for summer flounder and \$3,197, \$7,637 for scup, and \$1,642 for black sea bass. The number of vessels landing summer flounder, scup, and black sea bass in 2006 was 735, 419, and 536, respectively.

The predicted changes in ex-vessel gross revenues associated with the potential changes in quotas in 2008 versus 2007 assumed static 2006 prices (summer flounder--\$1.79/lb; scup--\$0.89/lb; and black sea bass--\$2.50/lb). However, if prices for these species change as a consequence of changes in landings, then the associated revenue changes could be different than those estimated above, and could mitigate

some of the revenue reductions associated with lower quantities of quota available under this alternative.

Alternative 2 (Most Restrictive Measures): The analysis of the harvest limits of Alternative 2 indicated that all vessels would incur revenue losses equal to or greater than 5 percent. More specifically, vessels are projected to incur revenue reductions as follows: 10–19 percent, 45 vessels; 20–29 percent, 292 vessels; 30–39 percent, 456 vessels; 40–49 percent, 61 vessels; and greater or equal to 50 percent, 41 vessels. Further examination shows that 314 of the impacted vessels (35 percent) had gross sales of \$1,000 or less and 547 of the impacted vessels (61 percent) had gross sales of \$10,000 or less, thus likely indicating that the dependence on these fisheries for some of these vessels is very small. Table 7 contains additional information on the specific impacts on gross sales under this alternative.

TABLE 7. COMPARISON OF ALTERNATIVE 2 IMPACTS TO VESSEL TOTAL GROSS SALES BY REVENUE REDUCTION CATEGORY

Revenue Reduction Range	2007 Total Gross Sales (Ex-Vessel Revenues)				
	No. of Vessels in Range	\$1,000 or Less		\$10,000 or Less	
		No. of Vessels	Percent in Range	No. of Vessels	Percent in Range
(Percent)					
10 to 19	45	17	38	33	73
20 to 29	292	115	39	208	71
30 to 39	456	157	34	258	57
40 to 49	69	10	14	20	29
Greater than or equal to 50	41	15	37	28	68
Total	903	314	35	547	61

As in Alternative 1, most commercial vessels showing revenue reduction are concentrated in MA, RI, NY, NJ, and NC.

Alternative 2 was estimated to decrease total summer flounder, scup,

and black sea bass revenues by approximately \$5.28 million, \$4.77 million and \$1.45 million respectively, relative to expected revenues earned from the 2007 quotas. The overall reduction in ex-vessel gross revenue

associated with the potential changes in quotas in 2008 versus 2007 is approximately \$11.50 million (in 2006 dollars) under Alternative 2. Assuming that the decrease in total ex-vessel gross revenue associated with the proposed

rule for each fishery is distributed equally among the vessels that landed those species in 2006 (the last full year of data availability), the average decrease in gross revenue per vessel associated with the Alternative 2 quota would be \$7,184 for summer flounder, \$11,384 for scup and \$2,706 for black sea bass. The total average gross revenue reduction for vessels that land summer flounder, scup and black sea bass would then be \$12,735.

Alternative 3 (Status Quo/Least Restrictive Measures): Alternative 3 was estimated to increase total summer flounder, scup, and black sea bass revenues by approximately \$0.61, \$0.04, and \$0.08 million respectively, relative to expected revenues earned from the 2007 quotas (assuming the entire quotas are landed and ex-vessel prices previously outlined remain effective).

The overall increase in ex-vessel gross revenue associated with the potential changes in quotas in 2008 versus 2007 is approximately \$0.73 million (in 2006 dollars) under Alternative 3. Assuming that the increase in total ex-vessel gross revenue associated with the proposed rule for each fishery is distributed equally among the vessels that landed those species in 2006 (the last full year of data availability), the average increase in gross revenue per vessel associated with the Alternative 3 quota would be \$829 for summer flounder, \$95 for scup and \$149 for black sea bass. The total average gross revenue reduction for vessels that land all three species would then be \$808.

Recreational Fishery Impacts

For the analysis of the alternative recreational harvest limits, the 2008 recreational harvest limits were compared with the 2007 recreational harvest limits and landings through 2006, the most recent year with complete recreational data. The 2008 specifications setting analysis conducted by Council staff is principally for commercial fisheries. As such, only general information related to the changes in recreational harvest limits are analyzed as part of the quota specification rulemaking. The effects of specific recreational management measures, including minimum fish sizes, possession limits, and fishing seasons for all three species will be analyzed by the Council when the Council and Board submit recommendations for the 2008 recreational fisheries following the December 2007 Council meeting. At that time, more complete 2007 recreational fishery information will be available.

Summer Flounder: The Alternative 1 recreational harvest limit (adjusted for

RSA) of 6.21 million lb (2,817 mt), would be a 7-percent decrease from the 2007 recreational harvest limit of 6.84 million lb (3,104 mt) and a 46-percent reduction from the 2006 landings of 11.51 million lb (5,221 mt). The Alternative 2 recreational harvest limit of 4.56 million lb (2,068 mt) would be 32 percent lower than the 2007 recreational harvest limit, and would represent a 60-percent decrease from 2006 recreational landings. The Alternative 3 (status quo) recreational harvest limit of 6.75 million lb (3,062 mt) would be a less than a 1-percent decrease from the 2007 recreational harvest limit (due to differences in the preliminary summer flounder RSA for the two years) and would represent a 41-percent decrease from 2006 recreational landings.

If recreational landings are the same in 2008 as in 2007, the Alternative 1 (Council Preferred) recreational harvest limits will not constrain recreational landings in 2008. As such, it is likely that more restrictive limits (i.e., lower possession limits, greater minimum size limits, and/or shorter seasons) would be required to prevent anglers from exceeding the recreational harvest limit in 2008. It is expected that this alternative would likely decrease recreational satisfaction for the summer flounder recreational fishery, relative to the status quo alternative. At the present time, there is neither behavioral nor demand data available to estimate how sensitive party/charter boat anglers might be to proposed fishing regulations. In the summer flounder fishery, there is no mechanism to deduct overages directly from the recreational harvest limit. Any overages must be addressed by way of adjustments to the management measures. While it is likely that proposed management measures may restrict the recreational fishery for 2008, and these measures may cause some decrease in recreational satisfaction (i.e., low bag limit, larger fish size or closed season), there is no indication that any of these measures may lead to a decline in the demand for party/charter boat trips. Currently, the market demand for this sector is relatively stable. Summer flounder recreational trips averaged 5.1 million for the 1991 to 2006 period, ranging from 3.8 million in 1992 to 6.1 million in 2001. For the years 2004 through 2006, summer flounder recreational fishing trips were estimated at 5.1, 5.7, and 5.4 per year, respectively.

Scup: Under Alternative 1, the scup recreational harvest limit would be 1.82 million lb (825 mt), 34 percent below the 2007 recreational harvest limit of

2.47 million lb (1,120 mt), and 38 percent below the 2006 recreational landings of 2.95 million lb (1,338 mt). The Alternative 2 scup recreational harvest limit of 1.33 million lb (603 mt) would be 52 percent less than the 2007 recreational harvest limit, and 55 percent below 2006 recreational landings. The Alternative 3 scup recreational harvest limit of 2.85 million lb (1,293 mt) would be a 4-percent increase from the 2007 recreational harvest limit and would represent a 3-percent decrease from 2006 recreational landings.

It is likely that more restrictive limits (i.e., lower possession limits, greater minimum size limits, and/or shorter seasons) with varying degrees of restrictions would be required under any scup alternative to prevent anglers from exceeding the recreational harvest limit in 2008. It is likely to decrease recreational satisfaction for the scup recreational fishery, relative to the status quo alternative. However, it is not expected that this will result in any substantive decreases in the demand for party/charter boat trips.

Scup recreational trips have shown a slight upward trend from the early 1990s to the early 2000s, ranging from approximately 199,000 trips in 1997 to 972,000 trips in 2003, with an average of approximately 454,000 trips per year for the 1991 through 2005 period. For 2004 and 2005, scup recreational fishing trips were estimated at approximately 568,000 and 458,000, respectively.

Black Sea Bass: Under Alternative 1, the black sea bass recreational harvest limit would be 2.11 million lb (957 mt), 15 percent below the 2007 recreational harvest limit of 2.47 million lb (1,120 mt), and less than 1 percent above the 2006 recreational landings of 2.10 million lb (953 mt). The Alternative 2 recreational harvest limit of 1.87 million lb (848 mt) would be 24 percent less than the 2007 recreational harvest limit, and 11 percent below the 2006 recreational landings. The Alternative 3 black sea bass recreational harvest limit of 2.51 million lb (1,139 mt) would be a 2-percent decrease from the 2007 recreational harvest limit and would represent a 20-percent increase over 2006 recreational landings.

Under Alternative 1, the black sea bass 2008 recreational harvest limit (adjusted for RSA) is 2.11 million lb (957 mt). However, if recreational landings are the same in 2007 as in 2006 (2.10 million lb; 953 mt), the adjusted recreational harvest limit is expected to constrain recreational landings in 2008. As such, more restrictive limits (i.e., lower possession limits, greater minimum size limits, and/or shorter

seasons) may not be necessary to prevent anglers from exceeding this recreational harvest limit in 2008.

Black sea bass recreational fishing trips have averaged approximately 247,000 per year for the 1991 through 2005 period, ranging from approximately 136,000 trips in 1999, to 311,000 trips in 1997. In 2005, recreational trips for black sea bass numbered approximately 166,000, the third lowest value in the 1991 through 2005 time series.

In summary, it is unlikely that any of the measures proposed would result in any substantive decreases in the demand for party/charter boat trips. It is likely that party/charter anglers would target other species when faced with potential reductions in the amount of summer flounder, scup, and black sea bass that they are allowed to catch. The Council intends to recommend specific measures to attain the 2008 summer flounder, scup, and black sea bass recreational harvest limit in December 2007, and will provide additional analysis of the measures upon submission of its recommendations in early 2008.

Research Set-Aside Impacts

The Council analysis for 2008 RSA contains two alternatives: Alternative 1 (non-preferred) wherein no RSA would occur and Alternative 2 (Council preferred/status quo) wherein the Council specifies RSA for 2008. The Council has recommended a maximum of 3 percent of the TALs for summer flounder, scup, and black sea bass may be set aside for research. Details on the three projects conditionally approved by NMFS are contained in the preamble to this rule. For analysis of the impacts of the two RSA alternatives, the RSA amounts are either the specific amounts requested by the conditionally approved 2008 projects or 3 percent of the TAL, whichever is less.

Under Alternative 1, no RSA would be deducted from the overall TAL and, as such, no downward adjustment to the TALs would occur. There would be no direct economic or social costs under the non-preferred Alternative 1, however collaborative efforts among the public, research institutions, and government aimed at broadening scientific knowledge of Mid-Atlantic species would cease under the RSA program. The nation would not receive the benefit of data or information that would otherwise be derived through the RSA program.

Under the Council-preferred Alternative 2, RSA would be specified for each species. The effects of doing so are summarized, as follows:

Summer Flounder: The commercial portion of the summer flounder RSA preliminary allocation in the proposed specifications, if made available to the commercial fishery, could be worth as much as \$250,448 dockside, based on a 2006 ex-vessel price of \$1.79/lb. Assuming an equal reduction in fishing opportunity among all active vessels, this could result in a per-vessel potential revenue loss of approximately \$341. Changes in the summer flounder recreational harvest limit as a result of the RSA are not expected to be significant as the deduction of RSA from the TAL. Under Alternative 3 (most restrictive TAL), a relatively marginal decrease in the recreational harvest limit from 4.66 million lb (2,114 mt) to 4.56 million lb (2,068 mt) would occur (approximately 2 percent decrease). TAL Alternatives 1 and 3, would be decreased by slightly less than 2 percent and slightly more than 1 percent, respectively. Because this is a marginal change, it is unlikely that the recreational possession, size, or seasonal limits would change as the result of the RSA allocation.

Scup: The commercial scup RSA allocation, if made available to the commercial fishery, could be worth as much as \$141,635 dockside for TAL Alternatives 1 and 3 which would permit the full amount requested (214,000 lb; 97 mt) because it is less than 3 percent of the respective alternatives TAL and \$97,519 under Alternative 2 which is the most restrictive and, as such, would only permit 3 percent of the TAL (150,600 lb; 68 mt). These values are based on a 2006 ex-vessel price of \$0.75/lb. Assuming an equal reduction in fishing opportunity for all active commercial vessels, this could result in a loss of potential revenue of approximately \$338 per vessel under Alternatives 1 and 3 and \$233 under Alternative 2. For the analyzed scup TAL alternatives, the changes in the recreational harvest limits are from 1.88 to 1.82 million lb (852 to 826 mt; a 3.2-percent decrease) under Alternative 1, from 1.37 (621 mt) to 1.33 million lb (603 mt) (a 2.9-percent decrease) under Alternative 2, and from 2.90 (1,315 mt) to 2.85 million lb (1,293 mt) (a 1.7-percent decrease) under Alternative 3. It is unlikely that scup recreational possession, size, or seasonal limits would change as the result of the RSA allocation.

Black Sea Bass: The commercial portion of the black sea bass RSA, if made available to the commercial fishery, could be worth as much as \$105,093 dockside, based on a 2006 ex-vessel price of \$2.50/lb. Assuming an equal reduction in fishing opportunity

for all active commercial vessels, this could result in a loss of approximately \$196 per vessel. For the analyzed black sea bass alternatives, the changes in the recreational harvest limits are from 2.15 (975 mt) to 2.11 million lb (957 mt) (a 1.9-percent decrease) under Alternative 1, from 1.91 (866 mt) to 1.87 million lb (848 mt) (a 2.1-percent decrease) under Alternative 2, and from 2.55 (1,157 mt) to 2.51 million lb (1,139 mt) (a 1.6-percent decrease) under Alternative 3. It is unlikely that the black sea bass possession, size, or seasonal limits would change as the result of this RSA allocation.

Overall, long-term benefits are expected as a result of the RSA program. The results of these projects will provide needed information on high-priority fisheries management issues related to Mid-Atlantic fisheries management. If the total amount of quota set-aside is not awarded for any of the three fisheries, the unused set-aside amount will be restored to the appropriate fishery's TAL. 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 if the RSAs are utilized.

Summary

The proposed specifications represent lower 2008 TALs for summer flounder, scup, and black sea bass. The proposed specifications were chosen because they allow for the maximum level of commercial and recreational landings, while allowing the NMFS to meet its legal requirements under the Magnuson-Stevens Act while achieving the objectives of the FMP. The summer flounder TAL was chosen to allow for rebuilding of the stock by 2013 and was selected as a means to balance the social and economic concerns for the 2008 fishery with the need to select a measure that is more precautionary than the minimum requirements (i.e., at least 50-percent probability for success) to ensure that overfishing does not occur and that the effects of the retrospective patterns are mitigated. The scup TAL was selected as it complies with the fishing mortality objective outlined in the scup rebuilding plan of Amendment 14 to the FMP. Due to the level of uncertainty in the black sea bass stock assessment and to the recent stock indices, the black sea bass TAL was selected as a risk-averse management approach to ensure continued stock rebuilding. The proposed 2008 adjusted commercial quotas for summer flounder, scup, and black sea bass are 4.8 percent, 40.4 percent, and 14.7

percent lower, respectively, relative to the adjusted quotas for year 2007. The proposed recreational harvest limits (adjusted for RSA) would be 7.2-, 33.6-, and 14.6-percent lower than the adjusted recreational harvest limits for year 2007.

There are no new reporting or recordkeeping requirements contained in any of the alternatives considered for this action.

Dated: November 8, 2007.

John Oliver,

Deputy Assistant Administrator for Operations, National Marine Fisheries Service.

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 071029545-7545-01]

RIN 0648-AU85

Fisheries of the Exclusive Economic Zone Off Alaska; Individual Fishing Quota Program; Community Development Quota Program

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

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS proposes regulations to modify the Individual Fishing Quota (IFQ) Program for the fixed-gear commercial Pacific halibut fishery and sablefish fishery by revising regulations governing use of commercial halibut quota share (QS) and processing of non-IFQ species when processed halibut is onboard a vessel. This action would amend current regulations to allow persons holding category A halibut QS to process IFQ regardless of whether a QS holder with unused category B, C, or D halibut QS is onboard the vessel. This action also would allow catcher/processor vessels to process non-IFQ species regardless of whether any processed IFQ species is onboard the vessel. This action is necessary to improve the efficiency of fishermen fishing on catcher/processor vessels. The intended effect of this action is to allow halibut QS holders greater flexibility in using their QS, allow use of crew who hold unused category B, C, or D halibut QS while onboard a category A halibut QS vessel, and

increase the product quality of non-IFQ species harvested incidentally to IFQ halibut.

DATES: Comments must be received no later than December 14, 2007.

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

- Mail: P.O. Box 21668, Juneau, AK 99802;
- Hand Delivery to the Federal Building: 709 West 9th Street, Room 420A, Juneau, AK;
- Fax: 907-586-7557;
- E-mail: OMNIV-PR-0648-AU85@noaa.gov. Include in the subject line of the e-mail the following document identifier: IFQ Halibut Sablefish 0648-AU85. E-mail comments, with or without attachments, are limited to 5 megabytes; or
- Webform at the Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions at that site for submitting comments.

Instructions: All comments received are a part of the public record and will generally be posted to <http://www.regulations.gov> without change. All personal identifying information (for example, name, address, etc.) voluntarily submitted by the commenter may be publicly accessible. Do not submit confidential business information or otherwise sensitive or protected information.

NMFS will accept anonymous comments. Attachments to electronic comments will be accepted in Microsoft Word, Excel, WordPerfect, or Adobe PDF file formats only.

Copies of the Categorical Exclusion (CE), Regulatory Impact Review (RIR), and Initial Regulatory Flexibility Analysis (IRFA) prepared for this action may be obtained from the North Pacific Fishery Management Council (Council) at 605 West 4th, Suite 306, Anchorage, Alaska 99501-2252, 907-271-2809, or the NMFS Alaska Region, P.O. Box 21668, Juneau, Alaska 99802, Attn: Ellen Sebastian, and on the NMFS Alaska Region website at <http://www.noaa.fakr.gov>.

FOR FURTHER INFORMATION CONTACT: Jay Ginter, 907-586-7228 or jay.ginter@noaa.gov.

SUPPLEMENTARY INFORMATION: The International Pacific Halibut Commission (IPHC) and NMFS manage fishing for Pacific halibut (*Hippoglossus stenolepis*) through regulations established under the authority of the Convention between the United States

and Canada for the Preservation of the Halibut Fishery of the Northern Pacific Ocean and Bering Sea (Convention) and the Northern Pacific Halibut Act of 1982 (Halibut Act). The IPHC promulgates regulations pursuant to the Convention. The IPHC's regulations are subject to approval by the Secretary of State with concurrence from the Secretary of Commerce (Secretary). After approval by the Secretary of State and the Secretary, the IPHC regulations are published in the **Federal Register** as annual management measures pursuant to 50 CFR 300.62 (72 FR 11792; March 14, 2007).

The Halibut Act also authorizes the Council to develop and submit regulations to the Secretary to allocate harvesting privileges among U.S. fishermen. Regulations developed by the Council are implemented only with the approval of the Secretary. Like the original IFQ Program regulations and subsequent amendments to them, this action was developed by the Council under authority of the Halibut Act.

The Council, under the authority of the Halibut Act (with respect to Pacific halibut) and the Magnuson-Stevens Fishery Conservation and Management Act (with respect to sablefish), adopted the IFQ Program in 1991. The Halibut and Sablefish IFQ Program established a limited access system for managing the fixed gear Pacific halibut fishery in Convention waters in and off Alaska and sablefish fisheries in waters of the Exclusive Economic Zone, located between 3 and 200 miles off Alaska. The IFQ Program was approved by NMFS in January 1993, and promulgated in Federal regulation on November 9, 1993 (58 FR 59375). Fishing under the Halibut and Sablefish IFQ Program began on March 15, 1995, ending the open access fishery which preceded its implementation. Regulations implementing the Halibut and Sablefish IFQ Program are at 50 CFR part 679. In addition, Federal regulations at 50 CFR part 300, subpart E, also govern the halibut IFQ fishery.

The Halibut and Sablefish IFQ Program was developed to reduce fishing capacity that had increased during years of management as an open access fishery, while maintaining the social and economic character of the fixed gear fishery that is relied on as a source of revenue for coastal communities in Alaska. The Council and the Secretary concluded that the Halibut and Sablefish IFQ Program would provide economic stability for the commercial hook-and-line fishery while reducing many of the conservation and management problems commonly associated with open access