

specifications are identical to the status quo alternative.

This proposed rule contains a collection-of-information requirement subject to the Paperwork Reduction Act (PRA), which was previously approved by OMB under OMB Control Number 0648-0601. The public reporting burden for the phone call to declare a *Loligo* fishing trip is estimated to average 2 min per call per trip. Public burden for the phone call to cancel a *Loligo* trip is estimated to average 1 min. Send comments regarding these burden estimates or any other aspect of this data collection, including suggestions for reducing the burden, to NMFS (see ADDRESSES) and by e-mail to OIRA\_Submission@omb.eop.gov, or fax to 202-395-7285.

Notwithstanding any other provision of the law, no person is required to respond to, and no person shall be subject to penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB Control Number.

List of Subjects in 50 CFR Part 648

Fisheries, Fishing, Recordkeeping and reporting requirements.

Dated: November 12, 2010.

Eric C. Schwaab, Assistant Administrator for Fisheries, National Marine Fisheries Service.

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

PART 648—FISHERIES OF THE NORTHEASTERN UNITED STATES

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

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

2. In § 648.21, paragraph (f)(2) is revised to read as follows:

§ 648.21 Procedures for determining initial annual amounts.

\* \* \* \* \*

(f) \* \* \*

(2) Any underages of commercial period quota for Trimester I that are greater than 25 percent of the Trimester I quota will be reallocated to Trimesters II and III of the same year. The reallocation of quota from Trimester I to Trimester II is limited, such that the Trimester II quota may only be increased by 50 percent; the remaining portion of the underage will be reallocated to Trimester III. Any underages of commercial period quota for Trimester I that are less than 25 percent of the Trimester I quota will be applied to Trimester III of the same year.

Any overages of commercial quota for Trimesters I and II will be subtracted from Trimester III of the same year.

\* \* \* \* \*

3. In § 648.22, paragraph (a)(2)(i) is revised to read as follows:

§ 648.22 Closure of the fishery.

(a) \* \* \*

(2) \* \* \*

(i) If the Regional Administrator determines that the Trimester I closure threshold has been underharvested by 25 percent or more, then the amount of the underharvest shall be reallocated to Trimesters II and III, as specified at § 648.21(f)(2), through notice in the Federal Register.

\* \* \* \* \*

4. Section 648.26 as amended at 75 FR 11450, March 11, 2010, effective January 1, 2011, and is further amended by revising paragraphs (a) and (d) to read as follows:

§ 648.26 Observer requirements for the Loligo fishery.

(a) A vessel issued a Loligo and butterfish moratorium permit, as specified at § 648.4(a)(5)(i), must, for the purposes of observer deployment, have a representative provide notice to NMFS of the vessel name, vessel permit number, contact name for coordination of observer deployment, telephone number or email address for contact; and the date, time, port of departure, and approximate trip duration, at least 72 hr, but no more than 10 days prior to beginning any fishing trip, unless it complies with the possession restrictions in paragraph (c) of this section.

\* \* \* \* \*

(d) If a vessel issued a Loligo and butterfish moratorium permit, as specified at § 648.4(a)(5)(i), intends to possess, harvest, or land 2,500 lb (1.13 mt) or more of Loligo per trip or per calendar day, has a representative notify NMFS of an upcoming trip, is selected by NMFS to carry an observer, and then cancels that trip, then the representative is required to provide notice to NMFS of the vessel name, vessel permit number, contact name for coordination of observer deployment, and telephone number or email for contact, and the intended date, time, and port of departure for the cancelled trip prior to the planned departure time. In addition, if a trip selected for observer coverage is canceled, then that vessel is required to carry an observer, provided an observer is available, on its next trip.

[FR Doc. 2010-29002 Filed 11-16-10; 8:45 am]

BILLING CODE 3510-22-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 101029427-0427-01]

RIN 0648-XY82

Fisheries of the Northeastern United States; Summer Flounder, Scup, and Black Sea Bass Fisheries; 2011 Summer Flounder, Scup, and Black Sea Bass Specifications; 2011 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 2011 summer flounder, scup, and black sea bass fisheries and provides notice of three projects that may 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), 16 U.S.C. 1801 et seq., 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 2011 specifications for the summer flounder, scup, and black sea bass fisheries, and to provide notice of EFP requests, in accordance with the FMP and Magnuson-Stevens Act.

DATES: Comments must be received on or before December 2, 2010.

ADDRESSES: You may submit comments, identified by RIN 0648-XY82, by any one of the following methods:

- Electronic Submissions: Submit all electronic public comments via the Federal eRulemaking Portal http://www.regulations.gov.
• Fax: (978) 281-9135.
• Mail and Hand Delivery: Patricia A. Kurkul, Regional Administrator, NMFS, Northeast Regional Office, 55 Great Republic Drive, Gloucester, MA 01930. Mark the outside of the envelope: "Comments on 2011 Summer Flounder,

Scup, and Black Sea Bass Specifications.”

*Instructions:* No comments will be posted for public viewing until after the comment period has closed. 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 (enter N/A in the required fields, if you wish to remain anonymous). You may submit attachments to electronic comments in Microsoft Word, Excel, WordPerfect, or Adobe PDF file formats only.

Copies of the specifications document, including the Environmental Assessment and Initial Regulatory Flexibility Analysis (EA/IRFA) and other supporting documents for the specifications are available from Dr. Christopher M. Moore, Executive Director, Mid-Atlantic Fishery Management Council, Suite 201, 800 North State Street, Dover, DE 19901. 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). 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°E13.3' 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).

Specifications, as referred to in this proposed rule, are the combined suite of catch levels established for one or more fishing years. These catch levels include the commercial fishery quota,

recreational harvest limit, and RSA. The specification process also allows for modification of a select number of management measures such as minimum size for commercially caught fish and minimum trawl net mesh sizes. The Council's process for establishing specifications relies on provisions within the FMP and its implementing regulations as well as requirements established by the Magnuson-Stevens Act. Specifically, section 302(g)(1)(B) of the Magnuson-Stevens Act states that a Scientific and Statistical Committee (SSC) for each Regional Fishery Management Council shall provide its Council ongoing scientific advice for fishery management decisions, including recommendations for acceptable biological catch (ABC), preventing overfishing, maximum sustainable yield (MSY), and achieving rebuilding targets. The ABC is a level of catch that accounts for the scientific uncertainty in the estimate of that stock's defined overfishing level. The Council's SSC met on July 28 and 29, 2010, to recommend ABCs for the 2011 summer flounder, scup, and black sea bass specifications.

The FMP's implementing regulations require the involvement of a monitoring committee in the specification process for each species. Since the Magnuson-Stevens Act requirements for the SSC to recommend ABC became effective, the monitoring committees' role has largely been to recommend any reduction in catch limits from the SSC-recommended ABCs to offset management uncertainty, and to recommend other management measures (e.g., mesh requirements, minimum commercial fish sizes, gear restrictions, possession restrictions, and area restrictions) needed for the efficient management of these three species' fisheries. The Summer Flounder Monitoring Committee, Scup Monitoring Committee, and Black Sea Bass Monitoring Committee met on July 30, 2010, to discuss specification-related recommendations for the 2011 fisheries.

Following the above meetings, the Council and the Commission's Summer Flounder, Scup, and Black Sea Bass Management Board (Board) considered the recommendations of the SSC and the three monitoring committees' and public comments, and made their specification recommendations. The Council and Board made their recommendations at a meeting held August 18, 2010. While the Board action on specifications was finalized at the August meeting, the Council's recommendations must be reviewed by NMFS to assure that they comply with the FMP and applicable law. NMFS also must conduct notice-and-comment

rulemaking to propose and implement the final specifications.

The FMP also contains formulas to divide the specification catch limits into commercial and recreational fishery allocations, state-by-state quotas, and quota periods, depending on the species in question. The FMP allocation provisions cannot be modified through the specification process. Rather, the Council would be required to develop and recommend allocation changes by amending the FMP. This proposed rule outlines the application of the existing allocation provisions for each species and provides the resulting allocations, by state and sector, as appropriate, for each species.

The involvement of the SSC in the specifications process and the evolving role of the monitoring committees has substantially modified the manner in which specifications are developed and considered by the Council. There is increased discussion and documentation regarding each species' stock status, scientific uncertainty associated with the stock and/or stock assessment, the risk of overfishing, management issues, and the derivation of each group's respective recommendation to the Council. In previous years' specification process, NMFS often provided extensive summarization of these issues in the proposed specification rule; however, doing so duplicates the extensive record established by the Council process. As such, only a nominal overview of each step of the specification process is provided in this proposed rule. Persons seeking more detailed information on the Council-related aspects of the specifications process, including the issues considered by the SSC and monitoring committees, are encouraged to obtain documents on these subjects, which are available from the Council or by consulting the Council's EA/IRFA (see **ADDRESSES** section). NMFS has participated in and relied on the documentation from the updated stock assessment proceedings, SSC and monitoring committee meetings and recommendations, and Council meeting in completing this proposed rule.

**Explanation of RSA**

*Background:* In 2001, regulations were implemented under Framework Adjustment 1 to the FMP to allow up to 3 percent of the Total Allowable Landings (TAL) for each species to be set aside each year in support of scientific research. For the 2011 fishing year, NMFS published a **Federal Register** notice soliciting research proposals based upon research priorities

identified by the Council (75 FR 3092, January 19, 2010).

NMFS intends to conditionally approve three research projects for the harvest of the portion of the set-aside quota that has been recommended by the Council and the Commission. In anticipation of receiving applications for EFPs to conduct this research and harvest set-aside quota, 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 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 likely 2011 Mid-Atlantic RSA projects, including exemptions that will likely be required to conduct the proposed research. The RSA amounts may be adjusted, following consultation with RSA applicants, in the final rule establishing the 2011 specifications for the summer flounder, scup, black sea bass, *Loligo* squid, butterfish, and Atlantic bluefish 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 2011, the conditionally approved projects may collectively be awarded the following amounts of RSA: 884,400 lb (401 mt) of summer flounder; 600,000 lb (272 mt) of scup; 108,000 lb (49 mt) of black sea bass; 727,527 lb (330 mt) of *Loligo* squid; 818,790 lb (371 mt) of bluefish; and 33,069 lb (15 mt) of butterfish. The harvest of RSA quota would occur January 1–December 31, 2011, by vessels conducting compensation fishing. Vessels harvesting research quota in support of approved research projects would be issued EFPs authorizing them to exceed Federal possession limits and to fish during Federal quota closures. These exemptions are necessary to facilitate compensation fishing and to allow project investigators to recover research expenses, as well as to adequately compensate fishing industry participants harvesting research quota. Vessels harvesting research quota would operate under all other regulations that

govern the fishery, unless specifically exempted in a separate EFP.

#### *2011 RSA Proposal Summaries:*

Project number 1 would conduct a fishery-independent scup and black sea bass survey that would utilize unvented fish pots fished on hard bottom areas in southern New England waters to characterize the size composition of the scup and black sea bass populations. Survey activities would be conducted June 15–October 15, 2011, at 15 hard bottom study sites. Up to two vessels would conduct the research survey. Sampling would occur off the coasts of Rhode Island and southern Massachusetts, with the furthest west site off of Block Island near Southwest Shoals. To achieve the research objectives, the principal investigators would require exemptions from gear requirements (excluding marine mammal avoidance and/or release devices) in order to sample small scup and black sea bass, and from minimum fish sizes and possession limits for data collection purposes.

Project number 2 would conduct a near-shore trawl survey between Aquinnah, Massachusetts, and Cape Hatteras, North Carolina, including both Block Island and Rhode Island Sounds. Two survey cruises would occur (spring and fall) with stratified random sampling of approximately 150 stations in depths between 18–120 feet (8–37 m). The function of the survey would be to provide stock assessment data for summer flounder, scup, black sea bass, *Loligo* squid, butterfish, bluefish, several species managed by the Commission such as weakfish and Atlantic croaker, and unmanaged forage species. The research aspects of the trawl survey would be conducted by one scientific research vessel, which could operate under a Letter of Acknowledgment (LOA), as established by experimental fishing regulations found at 50 CFR 600.745.

Project number 3 would conduct a black sea bass mark-recapture study using commercial pot and hook-and-line fishing gear to monitor changes in the size at age and sex distribution of black sea bass at three sites off New Jersey during the spawning season (May through August). Sampling would be conducted on the following three artificial reef sites off southern New Jersey: Ocean City; Wildwood; and Cape May reefs. Vessels conducting research trips would tag black sea bass with conventional and acoustic tags, and clustered hydrophones would be placed in the study area for 2.5 months. Subsequent research trips would conduct fishing with commercial pots and hook and line gear to re-capture

tagged fish, and to monitor the movement of fish with the acoustic tags. One commercial pot vessel and several party boats would conduct the research. Vessels conducting research activities would require exemption from commercial and recreational black sea bass quota closures to ensure the ability to sample during such closures, and exemption from black sea bass minimum fish size and possession limits for the purpose of collecting scientific data.

#### **Summer Flounder**

The summer flounder stock is currently under a rebuilding program, and rebuilding must be complete by January 1, 2013. The stock assessment update utilized to derive specification recommendations indicates that summer flounder were not overfished and that overfishing did not occur in 2009, the most recent year of available data. Furthermore, stock projections in the assessment update indicate that the rebuilding objective is likely to be attained ahead of schedule.

Based on this information, the SSC recommended to the Council that the 2011 ABC for summer flounder be set no higher than 33.95 million lb (15,399 mt). This results in a Total Allowable Catch (TAC; combined landings and discards) established at the ABC level (i.e., 33.95 million lb, 15,399 mt). Estimated commercial and recreational discards of 4.47 million lb (2,028 mt) are removed from the TAC to produce a 2011 TAL of 29.48 million lb (13,372 mt). This TAL is projected to have a 50-percent probability of achieving the  $F_{TARGET} = F_{40\text{ percent}} = 0.255$  in 2011, and is projected to have a 98-percent probability of preventing overfishing of the stock (i.e., preventing an  $F$  higher than  $F_{THRESHOLD} = F_{35\text{ percent}} = 0.310$ ). The Summer Flounder Monitoring Committee concurred with the SSC's ABC recommendation, and did not recommend any additional changes to either the TAC or to the 2011 summer flounder management measures that may be modified through the specification process.

The Council and Board considered the SSC and Summer Flounder Monitoring Committee recommendations before concurring with ABC/TAC and TAL of 29.48 million lb (13,372 mt) that results after removal of estimated discards. Fishing under this TAC/TAL level in 2011 is not expected to compromise summer flounder stock rebuilding, nor will fishing at this level present a high likelihood of overfishing the stock. The proposed TAL would be a 33.2-percent increase from the 2009 TAL of 22.13

million lb (10,038 mt). All other management measures were recommended by the Council to remain status quo.

The summer flounder regulations at 50 CFR 648.100 (a) 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 ( $F_{MAX}$ ). Framework Adjustment 7 to the FMP (Framework 7) was implemented on October 1, 2007 (72 FR 55704), to allow the best available scientific information be adopted without delay by the Council for use in managing summer flounder. The updated SDWG assessment recommended  $F_{MSY} = F_{35}$  percent as the best available fishing mortality rate estimate to produce the optimum yield per recruit and this assessment is now the threshold value for determining whether overfishing is occurring on summer flounder,

replacing  $F_{MAX}$ . A 2000 Federal Court Order (*Natural Resources Defense Council v. Daley*, Civil No. 1:99 CV 00221 (JLG)) also requires the annual summer flounder TAL to have at least a 50-percent probability of success. As previously stated, the Council and Board's recommended TAL of 29.48 million lb (13,372 mt) has a 98-percent probability of constraining fishing mortality below the overfishing threshold, and a 50-percent probability of achieving the assessment-recommended management target. NMFS therefore proposes to implement a TAL of 29.48 million lb (13,372 mt) for 2011, consistent with the Council's and Board's recommendation.

Based on the allocation scheme contained in the FMP, the TAL is divided 60 percent to the commercial fishery and 40 percent to the recreational fishery. This division results in an initial commercial quota of 17.69 million lb (8,024 mt), and a recreational harvest limit of 11.79

million lb (5,349 mt); however, the FMP also specifies that up to 3 percent of the TAL may be set aside for research activities before the remaining TAL is allocated to the commercial and recreational sectors. The Council and Board agreed to set aside up to 3 percent of the TAL, or 884,400 lb (401 mt). After deducting 3 percent of the 2011 TAL as RSA, the resulting sector allocations would be a commercial quota of 17.2 million lb (7,782 mt) and a recreational harvest limit of 11.4 million lb (5,188 mt).

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. Any commercial quota adjustments to account for overages will be included in the final rule implementing the 2011 specifications.

TABLE 1—2011 PROPOSED INITIAL SUMMER FLOUNDER STATE COMMERCIAL QUOTAS

State	Percent share	Initial commercial quota		Commercial quota less RSA <sup>1</sup>	
		lb	kg <sup>2</sup>	lb	kg <sup>2</sup>
ME .....	0.04756	8,412	3,816	8,160	3,701
NH .....	0.00046	81	37	79	36
MA .....	6.82046	1,206,403	547,224	1,170,211	530,808
RI .....	15.68298	2,774,006	1,258,289	2,690,785	1,220,540
CT .....	2.25708	399,232	181,092	387,255	175,659
NY .....	7.64699	1,352,600	613,539	1,312,022	595,133
NJ .....	16.72499	2,958,316	1,341,892	2,869,567	1,301,635
DE .....	0.01779	3,147	1,427	3,052	1,385
MD .....	2.03910	360,676	163,603	349,856	158,695
VA .....	21.31676	3,770,509	1,710,303	3,657,393	1,658,994
NC .....	27.44584	4,854,620	2,202,056	4,708,982	2,135,994
Total <sup>3</sup> .....	100.00001	17,688,002	8,023,278	17,157,362	7,782,579

<sup>1</sup> Preliminary Research Set-Aside amount is 884,400 lb (401 mt).

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

<sup>3</sup> Rounding of quotas results in totals exceeding 100 percent.

The Commission is maintaining in place the voluntary measures to reduce regulatory discards that occur as a result of landing limits established by the states. The Commission established a system whereby a 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 Federal FMP

and NMFS does not have authority to implement them.

**Scup**

The scup stock is not subject to a rebuilding plan at this time. The updated scup stock assessment indicates that the stock was not overfished nor subject to overfishing in 2009, the most recent year of complete data available in the assessment update.

The SSC recommended an ABC for scup based on 75 percent of  $F_{MSY}$  ( $F = 0.133$ ), resulting in an ABC/TAC of 51.7 million lb (23,451 mt). The SSC also conveyed concern about rapid increases in catches to achieve the MSY value for the scup stock. The cautionary statement to not increase catches to the full MSY quickly was originally issued by the peer review panel that reviewed

a 2009 Data Poor Stocks Working Group assessment of the scup stock.

The Scup Monitoring Committee proposed a range of TACs derived from the ABC recommendation. The range spanned from the landings associated with the MSY value for the scup stock of 35.1 million lb (15,921 mt) to the status quo TAC of 17.09 million lb (7,752 mt). The Scup Monitoring Committee also shared the concerns of the SSC and the assessment peer review panel that had cautioned against rapidly increasing scup catches to meet the MSY value of 35.1 million lb (15,921 mt).

The Council adopted a TAC for scup of 24.1 million lb (10,932 mt) as their recommendation for 2011. In turn, NMFS is proposing this TAC as the 2011 catch level for scup. This TAC

level would provide for a 20.0 million lb TAL (9,072 mt), and would be divided into the commercial and recreational allocations as outlined in the scup regulations. The FMP specifies that the established TAC be allocated 78 percent to the commercial sector and 22 percent to the recreational sector. The commercial TAC, discards, and TAL (i.e., final commercial quota, after reduced for any RSA) 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 proposed TAL would be subdivided into an initial commercial quota of 15.6 million lb (7,076 mt) and a recreational harvest limit of 4.4 million lb (1,996 mt). The Council voted to set up to 3 percent of the TAL or 600,000 lb (272 mt), aside for 2011 RSA. If it is, the commercial quota would be reduced to 15.1 million lb (6,864 mt), with a recreational harvest limit of 4.3 million lb (1,936 mt).

The proposed 2011 specifications would maintain the status quo base

scup possession limits, i.e., 30,000 lb (13,608 kg) per trip for Winter I, to be reduced to 1,000 lb (454 kg) per trip when 80 percent of the quota is projected to be reached, and 2,000 lb (907 kg) per trip for Winter II.

Table 2 presents the 2011 commercial allocation recommended by the Council, with and without the preliminary RSA deduction. These 2010 allocations are preliminary and may be adjusted in the final rule implementing these specifications due to previously unaccounted for overages, based on the procedures for calculating overages.

TABLE 2—2011 PROPOSED INITIAL TAC, INITIAL COMMERCIAL SCUP QUOTA, AND POSSESSION LIMITS

Period	Percent	TAC in lb (mt)	Discards in lb (mt)	Initial commercial quota in lb (mt)	Commercial quota less RSA in lb (mt)	Possession limits in lb (kg)
Winter I .....	45.11	8,479,778 (3,846)	1,442,618 (654)	7,037,160 (3,192)	6,826,045 (3,096)	1 30,000 (13,608)
Summer .....	38.95	7,321,821 (3,321)	1,245,621 (565)	6,076,200 (2,756)	5,893,914 (2,673)	n/a
Winter II .....	15.94	2,996,401 (1,359)	509,761 (231)	2,486,640 (1,128)	2,412,041 (1,094)	2,000 (907)
Total <sup>2</sup> .....	100.00	18,798,000 (8,527)	3,198,000 (1,451)	15,600,000 (7,076)	15,132,000 (6,864)	n/a

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

<sup>2</sup> Totals 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 (0.68 mt) 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 UNHARVESTED 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**

Black sea bass are not subject to a stock rebuilding program. The updated stock assessment indicates that black sea bass were not overfished and overfishing did not occur in 2009.

The SSC recommended that ABC for black sea bass remain at the status quo level of 4.5 million lb (2,041 mt) for 2011. The SSC stated that there remains a high degree of uncertainty

surrounding the overfishing limit estimate for the black sea bass stock, as well as considerable uncertainties about the black sea bass stock structure, life history, and retrospective patterns within the stock assessment.

The Black Sea Bass Monitoring Committee concurred with the ABC recommendation, and recommended a TAC of 4.5 million lb (2,041 mt) to the Council.

The Council and Board considered the SSC and Black Sea Bass Monitoring Committee recommendations at their August meeting. The Council and Board concurred with the ABC/TAC recommendation of 4.5 million lb (2,041 mt) for 2011. After estimated commercial fishery and recreational landings are removed from the ABC/TAC, the TAL for black sea bass would be 3.6 million lb (1,633 mt).

NMFS is proposing a 2011 TAC of 4.5 million lb (2,041 mt) and TAL of 3.6 million lb (1,633 mt) for the 2011 black sea bass fisheries, consistent with the recommendations of the Council and Board. The FMP specifies that the TAL is to be allocated 49 percent to the commercial sector and 51 percent to the recreational sector; therefore, the initial TAL would be allocated 1.76 million lb (798 mt) to the commercial sector as a commercial quota and 1.84 million lb (835 mt) to the recreational sector as a recreational harvest limit. The Council and Board voted to set aside up to 3 percent of the TAL, or 108,000 lb (49 mt), as RSA. This would adjust the commercial quota to 1.7 million lb (776 mt) and the recreational harvest limit to 1.8 million lb (808 mt). Only the ABC/TAC is the same as last year, the overall TAL being proposed for 2011 (3.6 million lb (1,633 mt)) is 100,000 lb (45 mt) less than the status quo because the updated discard estimate is higher for 2011 than for 2010.

#### Summary of NMFS' Proposed 2011 Summer Flounder, Scup, and Black Sea Bass Specifications

*Summer Flounder:* TAL of 29.48 million lb (13,372 mt); RSA of 884,400 lb (401 mt); commercial quota of 17,157,360 lb (7,782 mt); and a recreational harvest limit of 11,438,240 lb (5,188 mt).

*Scup:* 20.0 million lb TAL (9,072 mt); RSA of 600,000 lb (272 mt); commercial quota to 15,132,000 lb (6,864 mt); and a recreational harvest limit of 4,268,000 lb (1,936 mt).

*Black Sea Bass:* TAL of 3,600,000 lb (1,633 mt); RSA of 108,000 lb (49 mt); commercial quota 1,711,080 lb (776 mt); and recreational harvest limit of 1,780,920 (808 mt).

#### 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 by the Council, as required by section 603 of the Regulatory Flexibility Act (RFA), to examine the impacts of these proposed specifications on small business entities, if adopted. A description of the specifications, why they are being considered, and the legal basis for proposing and implementing

specifications for the summer flounder, scup, and black sea bass fisheries are contained in the preamble to this proposed rule. A copy of the detailed RFA analysis is available from NMFS or the Council (see **ADDRESSES**). The Council's analysis made use of quantitative approaches when possible. Where quantitative data on revenues or other business-related metrics that would provide insight to potential impacts were not available to inform the analyses, qualitative analyses were conducted. A summary of the 2011 specifications RFA analysis follows.

Small businesses operating in commercial and recreational (i.e., party and charter vessel operations) fisheries have been defined by the Small Business Administration as firms with gross revenues of up to \$4.0 and \$6.5 million, respectively. 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. All federally permitted vessels fall into the definition of small businesses; thus, there would be no disproportionate impacts between large and small entities as a result of the proposed rule.

The Council estimates that the proposed 2011 specifications could affect 2,206 vessels that held a Federal summer flounder, scup, and/or black sea bass permit in 2009 (the most recent year of complete permit data). However, the more immediate impact of this rule will likely be realized by the 810 vessels that actively participated in these fisheries (i.e., landed these species) in 2009.

There are no new reporting or recordkeeping requirements contained in any of the alternatives considered for this action. In addition, NMFS is not aware of any relevant Federal rules that may duplicate, overlap, or conflict with this proposed rule.

If the Council took no action regarding the 2011 specifications, several indefinite measures would remain in effect until otherwise changed; however, many components of the 2010 specifications expire on December 31, 2010. These include TALs for all three species and TAC for scup. There are no roll-over provisions for the 2010 quotas if the 2011 specifications are not made effective, and so, without specified quotas, NMFS would have no mechanism to close fisheries if management limits were exceeded. This would give rise to a situation in which the goals and objectives of the FMP, its implementing regulations, and the

Magnuson-Stevens Act would all be violated. Therefore, the no action alternative is not considered to be a reasonable alternative to the preferred action of developing and implementing 2011 specifications and, as such, it was excluded from detailed analysis in the Council's EA/RFA analyses.

The Council analyzed three sets of combined TAL alternatives for the 2010 summer flounder, scup, and black sea bass fisheries. Of these, one alternative, labeled Alternative 2 for each species, contained the most restrictive TAL options (i.e., lowest total landing levels—summer flounder, 22.13 million lb (10,038 mt); scup, 14.11 million lb (6,400 mt); black sea bass, 2.30 million lb (1,043 mt)). While the Alternative 2 measures would achieve the objectives of the proposed action for each of three species, they have the highest potential adverse economic impacts on small entities in the form of potential foregone fishing opportunities. Alternative 2 was not preferred by the Council because the other alternatives considered are expected have lower adverse impacts on small entities while achieving the stated objectives of rebuilding the summer flounder stock and sustaining the scup and black sea bass stocks, consistent with the FMP and Magnuson-Stevens Act. Accordingly, Alternative 2 was excluded from this analysis.

The Council analyzed two sets of TAL alternatives for the three species that would accomplish the stated objectives of the proposed action, and that would minimize the adverse economic impacts of the proposed rule on small entities. Alternative 1 (Council's preferred) would implement the following TALs in 2011: Summer Flounder, 29.48 million lb (13,372 mt); scup, 20.0 million lb (9,072 mt); and black sea bass, 3.6 million lb (1,633 mt). Alternative 3 (least restrictive/highest quota levels) would implement the following TALs in 2011: Summer flounder, 35.05 million lb (15,898 mt); scup, 28.96 million lb (13,136 mt); and black sea bass, 4.35 million lb (1,973 mt).

#### Commercial Fishery Impacts

To analyze the potential impacts of the proposed alternatives, the Council examined the total revenue earned by an individual vessel in 2009 (as a proxy for 2010), and compared the potential revenue in 2011 given the changes in fishing opportunity available through changes in harvest levels from 2010 to 2011. While there are caveats to such an approach—for example a vessel may hold multiple permits and supplement losses of opportunity in one fishery with another comparable species; or ex-vessel prices may change from levels utilized

in the analysis—the approach taken provides a rational basis for explaining the potential financial impact to participating vessels. It is important to note that actual impacts to individual vessels will likely differ as a product of the many variables that cannot be easily accounted for in the Council's analyses.

Under Alternative 1 (Council's preferred), assuming the increase in total ex-vessel gross revenues associated with the increased commercial quota for summer flounder is equally distributed among the 673 vessels that landed summer flounder in 2009, the potential average revenue could increase by \$12,036 per vessel. For scup, the expected revenue across the 398 vessels that landed scup in 2009 could increase by an average of \$8,492 per vessel. Revenues are projected to decrease by \$304 across the 460 vessels that landed black sea bass in 2009, due to the slight commercial quota decrease under Alternative 1. The Council's analysis indicated that this decrease in black sea bass would comprise less than 5 percent of these vessels' expected revenue.

Under Alternative 3 (least restrictive TALs), analysis indicates that the 2011 commercial quotas could increase revenues per vessel as follows: Summer flounder, \$21,085; scup, \$21,432; and black sea bass, \$1,826. The potential average increase in revenue per vessel for the combined suite of summer flounder, scup, and black sea bass landed by 810 vessels in 2009 was estimated to be \$29,086 per vessel.

### Recreational Fishery Impacts

While the specifications proposed would establish a 2011 recreational harvest limit for summer flounder, scup, and black sea bass, the management measure details for recreational fisheries will be decided by the Council in December 2010, followed by NMFS rulemaking in the first quarter of 2011. A comprehensive analysis of the impacts associated with the recommended recreational management measures will be provided to NMFS from the Council to support these activities.

The Council also examined the potential impact on the demand for recreational for-hire party/charter vessel trips resulting from Alternatives 1 and 3. While impacts are also likely to occur for individual private recreational fishery participants and fishing-related businesses such as bait and tackle shops, these are neither regulated small-business entities under NMFS' jurisdiction, nor is there participation cost or other economic metric data available to assess potential impact on such groups. The Council's analysis indicates that demand for for-hire trips and general saltwater recreational angler participation has trended upward slightly over the past decade. The Council's analysis also indicated that it was not possible to reasonably predict behavioral or demand changes in response to the recreational harvest limits proposed under any of the three alternatives. However, under Alternatives 1 and 3, it is not expected that, based on current recreational

landings data, 2011 management measures (*i.e.*, minimum fishing size, possession limits, and fishing seasons) would need to be made more constraining, except for potential restrictions under the Alternative 1 black sea bass recreational harvest limit. As previously stated, the Council will undertake additional recreational management measures development and analysis in December 2010.

### Summary

The Council selected Alternative 1 (preferred) over Alternative 3 (least restrictive) stating that, while Alternative 3 measures would provide higher economic benefits than the preferred measures of Alternative 1, the Alternative 3 measures were expected to result in long-term negative impacts for the summer flounder, scup, and black sea bass stocks, and were inconsistent with the advice provided to the Council from the SSC and its monitoring committees. NMFS agrees with the Council's IRFA analysis and rationale for recommending the TALs in Alternative 1. As such, NMFS is proposing to implement the Alternative 1 TALs for 2011: Summer flounder, 35.05 million lb (15,898 mt); scup, 28.96 million lb (13,136 mt); and black sea bass, 4.35 million lb (1,973 mt).

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

Dated: November 12, 2010.

**Eric C. Schwaab,**

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[FR Doc. 2010-29000 Filed 11-16-10; 8:45 am]

**BILLING CODE 3510-22-P**