

Dated: November 4, 2004.

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Acting Regional Director.

[FR Doc. 04-26709 Filed 12-3-04; 8:45 am]

BILLING CODE 4310-55-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[Docket No. I.D. 041110317-4317; I.D. 110404B]

RIN 0648-AR51

50 CFR Part 648

Fisheries of the Northeastern United States; Summer Flounder, Scup, and Black Sea Bass Fisheries; 2005 and 2006 Summer Flounder Specifications; 2005 Scup and Black Sea Bass Specifications; 2005 Research Set-Aside Projects

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

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS proposes specifications for the 2005 and 2006 summer flounder fisheries, and for the 2005 scup and black sea bass fisheries. The implementing regulations for the Fishery Management Plan for the Summer Flounder, Scup, and Black Sea Bass Fisheries (FMP) require NMFS to publish specifications for the upcoming fishing year for each of the species and to provide an opportunity for public comment. This proposed rule also would make changes to the regulations regarding the commercial scup fishery. The intent of this action is to establish harvest levels and other measures to attain the target fishing mortality rates (F) or exploitation rates specified for these species in the FMP, and to reducing bycatch and improve the efficiency of the commercial scup fishery. NMFS has conditionally approved three research projects for the harvest of the portion of the quota that has been recommended by the Mid-Atlantic Fishery Management Council (Council) to be set aside for research purposes. In anticipation of receiving applications for Experimental Fishing Permits (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 Research Set-Aside (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.

DATES: Comments must be received on or before December 21, 2004.

ADDRESSES: 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. The specifications document is also accessible via the Internet at <http://www.nero.nmfs.gov>. Written comments on the proposed rule should be sent to Patricia A. Kurkul, Regional Administrator, NMFS, Northeast Regional Office, One Blackburn Drive, Gloucester, MA 01930. Mark the outside of the envelope "Comments—Summer Flounder, Scup, and Black Sea Bass Specifications." Comments may also be sent via facsimile (fax) to 978-281-9135, or via e-mail to the following address: FSB2005@noaa.gov. Include in the subject line of the e-mail comment the following document identifier: "Comments on Summer Flounder, Scup, and Black Sea Bass Specifications." Comments may also be submitted electronically through the Federal e-Rulemaking portal: <http://www.regulations.gov>.

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

SUPPLEMENTARY INFORMATION:

Background

The summer flounder, scup, and black sea bass fisheries are managed cooperatively by the Atlantic States Marine Fisheries Commission (Commission) and the Council, in consultation with the New England and South Atlantic Fishery Management Councils. The management units specified in the FMP include summer flounder (*Paralichthys dentatus*) in U.S. waters of the Atlantic Ocean from the southern border of North Carolina (NC) northward to the U.S./Canada border, and scup (*Stenotomus chrysops*) and black sea bass (*Centropristis striata*) in U.S. waters of the Atlantic Ocean from 35°13.3' N. lat. (the latitude of Cape Hatteras Lighthouse, Buxton, NC) northward to the U.S./Canada border.

Implementing regulations for these fisheries are found at 50 CFR part 648, subparts A, G (summer flounder), H (scup), and I (black sea bass).

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

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, is required to review the best available scientific information and to recommend 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.

The Council's Demersal Species Committee and the Commission's Summer Flounder, Scup, and Black Sea Bass Management Board (Board) then 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. The Council and Board made their recommendations at a joint meeting held August 11, 2004.

Explanation of RSA

In 2001, regulations were implemented under Framework Adjustment 1 to the FMP to allow up to 3 percent of the TAL for each of the species to be set aside each year for scientific research purposes. For the 2005 fishing year, a Request for

Proposals was published to solicit research proposals based upon the research priorities that were identified by the Council (69 FR 10990, March 9, 2004). The deadline for submission of proposals was April 8, 2004. Three applicants were notified in June 2004 that their research proposals had received favorable preliminary review. For informational purposes, this proposed rule includes a statement indicating the amount of quota that has been preliminarily set aside for research purposes, as recommended by the Council and Board, and a brief description of the RSA projects. The RSA amounts may be adjusted in the final rule establishing the annual specifications for the summer flounder, scup, and black sea bass fisheries or, if the total amount of the quota set-aside is not awarded, NMFS will publish a notice in the **Federal Register** to restore the unused RSA amount to the applicable TAL.

For 2005, three RSA projects have been conditionally approved by NMFS and are currently awaiting notice of award. The total RSA quotas, approved by the Council and Board, allocated for all three projects are: 353,917 lb (161 mt) of summer flounder; 303,675 lb (138 mt) of scup; 109,500 lb (50 mt) of black sea bass; 562,350 lb (255 mt) of *Loligo* squid; and 297,750 lb (135 mt) of bluefish.

The University of Rhode Island submitted a proposal to conduct a second 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 1 through November 8, 2005, at six rocky bottom study sites located offshore, where there is a minimal scup pot fishery and no active trawl fishery. Up to two vessels would conduct the survey. Sampling would occur off the coasts of Rhode Island and southern Massachusetts. The RSA allocated for this project is 18,000 lb (8 mt) of black sea bass and 63,675 lb (29 mt) of scup.

The National Fisheries Institute (NFI) and Rutgers University submitted a proposal to conduct a third year of work on a commercial vessel-based trawl survey program in the Mid-Atlantic region that would track the migratory behavior of selected recreationally and commercially important species. Information gathered during this project would supplement the NMFS finfish survey databases and improve methods to evaluate how seasonal migration of fish in the Mid-Atlantic influences stock abundance estimates. One vessel would

conduct survey work in the Mid-Atlantic along six offshore transects near Alvin, Hudson, Wilmington, Baltimore, and Washington Canyons. Up to 15, 1–nautical mile tows would be conducted along each transect at depths from 40 to 250 fathoms (73 to 457 m). Four transects would be sampled in both January and March, and two transects would be sampled in both May and November. Two additional transects may be conducted pending vessel availability, weather, and funding. Up to 25 vessels would participate in harvesting the RSA during the period January 1 through December 31, 2005. The RSA allocated for the project is 192,177 lb (87 mt) of summer flounder; 120,000 lb (54 mt) of scup; 281,350 lb (128 mt) of *Loligo* squid; 61,500 lb (28 mt) of black sea bass; and 279,750 lb (127 mt) of bluefish.

NFI and Rutgers University also submitted a proposal to conduct a second year of work to study finfish discarded in *Loligo* squid-targeted tows. The project would test different mesh sizes, including the legal-sized mesh size of 1.875 inches (4.8 cm) and larger mesh sizes up to 3.0 inches (7.6 cm). The project is designed to give insights to bycatch of finfish species when different mesh sizes are used in the *Loligo* squid fishery. Up to two vessels would conduct the project in February or March near Hudson Canyon. A total of 80 to 100 tows would be performed with vessels fishing in parallel, where possible. The RSA allocated for the project is 30,000 lb (14 mt) of black sea bass; 120,000 lb (54 mt) of scup; 281,000 lb (127 mt) of *Loligo* squid; and 161,740 lb (73 mt) of summer flounder.

Regulations under the Magnuson-Stevens Fishery Conservation and Management Act (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 rule 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 rule stage, 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 rule to implement these specifications is published. The commercial quotas contained in this proposed rule for summer flounder, scup, and black sea bass do not reflect any deductions for overages. The final rule, however, will contain quotas that have been adjusted consistent with the procedures described above and contained in the regulatory amendment.

Summer Flounder

The FMP specifies a target F of F_{\max} , that is, the level of fishing that produces maximum yield per recruit. The best available scientific information indicates that, for 2005 and 2006, F_{\max} for summer flounder is 0.26 (equal to an exploitation rate of about 22 percent from fishing).

The most recent stock assessment, updated by the Northeast Fisheries Science Center (NEFSC) Southern Demersal Working Group in June 2004, indicated that the summer flounder stock is not overfished but that overfishing is occurring, according to the definitions in the FMP. These conclusions were derived from the fact that, for 2003, the estimated total stock biomass of 149 million lb (67,585 mt) is 27 percent above the minimum biomass threshold of 117 million lb (53,070 mt) below which the stock is considered overfished ($1/2 B_{\text{msy}}$), and the estimated F of 0.29 was slightly above the FMP overfishing definition of $F = F_{\max} = 0.26$. In addition, spawning stock biomass (SSB) has increased steadily from 20.5 million lb (9,303 mt) in 1993 to 109 million lb (49,442 mt) in 2003, the highest value in the time series.

Although the summer flounder stock is no longer considered overfished, additional rebuilding is necessary because the Magnuson-Stevens Act requires that stocks be rebuilt to the level that produces maximum sustainable yield on a continuing basis, i.e., 234.6 million lb (106,400 mt) for summer flounder. Long-term projections indicate that the stock can reach this biomass target by 2010 through the implementation of TALs associated with a 75-percent probability of reaching the target F in 2005 through 2009. Based on the latest stock assessment update, a TAL of 30.3 million lb (13,744 mt) has a 75-percent probability of achieving an F of 0.26 if the TAL and assumed

discard level in 2004 are not exceeded. The TAL associated with a 75-percent probability level in 2006 is 33.0 million lb (14,969 mt).

The Council and the Board adopted the Summer Flounder Monitoring Committee's recommendation of a summer flounder TAL of 30.3 million lb (13,744 mt) for 2005 and 33.0 million lb (14,969 mt) for 2006. These TALs would represent a 7-percent increase and a 17-percent increase for 2005 and 2006, respectively, from the 2004 TAL of 28.2 million lb (12,791 mt). The initial TALs would be allocated 60 percent to the commercial sector and 40 percent to the recreational sector, i.e., the initial TAL for 2005 would be allocated 18.18 million lb (8,246 mt) to the commercial sector and 12.12 million lb (5,498 mt) to the recreational sector, and the initial TAL for 2006 would be allocated 19.8 million lb (8,981 mt) to the commercial sector and 13.2 million lb (5,987 mt) to the recreational sector. The commercial quota for each year then would be allocated to the coastal states based upon percentage shares specified in the FMP.

For 2005, the Council and Board also agreed to set aside 353,917 lb (160.5 mt) of the summer flounder TAL for

research activities. For 2006, because information pertaining to the potential amount of RSA is unknown, RSA is conservatively estimated as 3 percent of the TAL, i.e., 990,000 lb (449 mt). After deducting the RSA, the TAL for 2005 would be divided into a commercial quota of 17.97 million lb (8,151 mt) and a recreational harvest limit of 11.98 million lb (5,434 mt), and the TAL for 2006 would be divided into a commercial quota of 19.21 million lb (8,714 mt) and a recreational harvest limit of 12.80 million lb (5,806 mt).

In addition, 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 any tables in this document because NMFS does not have authority to establish such subcategories.

NMFS proposes to implement the 30.3-million lb (13,744-mt) TAL with a 353,917-lb (160.5-mt) RSA for 2005, and the 33.0-million lb (14,969-mt) TAL with an estimated 990,000-lb (449-mt) RSA for 2006, as recommended by the Council and Board. The 11.98-million lb (5,434-mt) and 12.80-million lb (5,806-mt) recreational harvest limits for 2005 and 2006, respectively, would be allocated on a coastwide basis. The commercial quotas for 2005 and 2006 would be allocated to the states as shown in Tables 1 and 2, respectively, which present the allocations by state, with and without the commercial portion of the RSA deduction. These state quota allocations are preliminary and are subject to a reduction if there are overages of a state's quota for the previous fishing year (using the landings information and procedures described earlier). Any commercial quota adjustments to account for overages will be published in the **Federal Register** in the final rule implementing these specifications.

BILLING CODE 3510-22-S

Table 1. 2005 Proposed Initial Summer Flounder State Commercial Quotas

State	Percent Share	Commercial Quota		Commercial Quota less RSA	
		lb	kg ¹	lb	kg ¹
ME	0.04756	8,646	3,922	8,547	3,877
NH	0.00046	84	38	83	37
MA	6.82046	1,239,960	562,442	1,225,637	555,945
RI	15.68298	2,851,166	1,293,280	2,818,232	1,278,341
CT	2.25708	410,337	186,128	405,597	183,978
NY	7.64699	1,390,223	630,601	1,374,164	623,317
NJ	16.72499	3,040,603	1,379,209	3,005,481	1,363,277
DE	0.01779	3,234	1,467	3,197	1,450
MD	2.03910	370,708	168,152	366,426	166,210
VA	21.31676	3,875,387	1,757,864	3,830,622	1,737,559
NC	27.44584	4,989,654	2,263,292	4,932,017	2,237,148
TOTAL	100.00001	18,180,002	8,246,395	17,970,002	8,151,139

¹Kilograms are as converted from pounds and do not add to the converted total due to rounding.

Table 2. 2006 Proposed Initial Summer Flounder State Commercial Quotas

State	Percent Share	Commercial Quota		Commercial Quota less RSA	
		lb	kg ¹	lb	kg ¹
ME	0.04756	9,417	4,271	9,136	4,144
NH	0.00046	91	41	88	40
MA	6.82046	1,350,451	612,561	1,310,210	594,308
RI	15.68298	3,105,230	1,408,523	3,012,700	1,366,552
CT	2.25708	446,902	202,713	433,585	196,673
NY	7.64699	1,514,104	686,793	1,468,987	666,328
NJ	16.72499	3,311,548	1,502,108	3,212,871	1,457,349
DE	0.01779	3,522	1,598	3,417	1,550
MD	2.03910	403,742	183,136	391,711	177,679
VA	21.31676	4,220,718	1,914,505	4,094,950	1,857,457
NC	27.44584	5,434,276	2,464,972	5,272,346	2,391,520
TOTAL	100.00001	19,800,002	8,981,222	19,210,002	8,713,600

¹Kilograms are as converted from pounds and do not add to the converted total due to rounding.

Scup

Scup was last assessed in June 2002 at the 35th Northeast Regional Stock Assessment Workshop (SAW). The Stock Assessment Review Committee (SARC 35) indicated that the species is no longer overfished, but that stock status with respect to overfishing cannot currently be evaluated. The NEFSC spring survey 3-year average (2002 through 2004) for scup SSB was 3.74 kg/tow, which is about 35 percent higher than the threshold that defines the stock as overfished (2.77 kg/tow).

SARC 35 indicated that relative exploitation rates on scup have declined in recent years, although the absolute value of F cannot be determined. Overall, most recent scup survey observations indicate strong recruitment and some rebuilding of age structure. SARC 35 noted that the stock can likely sustain modest increases in catch, but that such increases should be taken with due consideration of the uncertainties associated with the stock status determination.

The target exploitation rate for scup for 2005 is 21 percent. 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 (TAC less discards = TAL). The commercial TAL is 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 scup specifications for 2005 are based on an exploitation rate in the rebuilding schedule that was approved when scup was added to the FMP in 1996, prior to passage of the Sustainable Fisheries Act (SFA). Subsequently, to comply with the SFA amendments to the Magnuson-Stevens Act, the Council prepared Amendment 12 to the FMP, which proposed to maintain the existing rebuilding schedule for scup established by Amendment 8 to the FMP. On April 28, 1999, NMFS disapproved the proposed rebuilding plan for scup because the rebuilding schedule did not appear to be sufficiently risk-averse. Later, however, NMFS advised the Council that use of the exploitation rate as a proxy for F would be acceptable and risk-averse. Therefore, the proposed scup specifications for 2005 are based on an exploitation rate of 21 percent. NMFS

believes that the risks associated with the disapproved rebuilding plan are not applicable to the proposed specifications since they apply only for one fishing year and will be reviewed, and modified as appropriate, by the Council and NMFS annually. The scup stock has shown signs of significant rebuilding and is no longer overfished. It is, therefore, not necessary to deviate from the specified exploitation rate in 2005. Furthermore, setting the scup specifications using an exploitation rate of 21 percent is a more risk-averse approach to managing the resource than not setting any specifications until the Council submits, and NMFS approves, a revised rebuilding plan that complies with all Magnuson-Stevens Act requirements.

Because of uncertainty associated with the spring survey and the pending stock assessment that will be presented to the SARC this December, the Monitoring Committee recommended, and the Council and Board adopted the recommendation to set specifications for 2005 only, and to maintain the current TAC/TAL. Based on the increase in the spring survey index in 2004, maintaining the 16.5-million lb (7,484-mt) TAL is likely to achieve the target exploitation rate for 2005. The level of discards used in 2004 (2.15 million lb (975 mt)) continues to be used for 2005, so the TAC would be 18.65 million lb (8,460 mt). NMFS is proposing to implement the Council's and Board's TAC/TAL recommendation because it is considered likely to achieve the 21-percent exploitation rate required by the FMP.

Using the sector allocation specified in the FMP (commercial 78 percent; recreational--22 percent), the Council's recommendation would result in a commercial TAC of 14.55 million lb (6,600 mt) and a recreational TAC of 4.10 million lb (1,860 mt). Using the same commercial and recreational discard estimates used for the 2004 specifications (i.e., 2.08 million lb (943 mt) for the commercial sector, and 70,000 lb (32 mt) for the recreational sector), the Scup Monitoring Committee recommendation would result in an initial commercial TAL of 12.47 million lb (5,656 mt) and recreational harvest limit of 4.03 million lb (1,828 mt). The Council and Board also agreed to set aside 303,675 lb (138 mt) of the scup TAL for research activities. Deducting this RSA from the TAL would result in a commercial quota of 12.23 million lb (5,547 mt) and a recreational harvest limit of 3.96 million lb (1,796 mt).

Pursuant to an industry request, and to reduce scup discards, the Council and Board recommended an increase in the commercial scup Winter I Federal possession limit to 30,000 lb (13.6 mt) per trip for 2005. Because scup are a schooling species, otter trawl vessels operating where scup occur occasionally make very large hauls that consist almost entirely of scup. Under the current system, when one of these hauls is brought up, the possession limit may be kept by the hauling vessel while the remaining catch must be discarded or transferred to another vessel.

Increasing the Winter I possession limit would convert potential regulatory discards of scup into landings, thus reducing bycatch and improving the efficiency of the commercial scup fishery. Allowing the commercial sector to fulfil the Winter I quota should also reduce the incentive for vessels to catch scup at the end of the Winter I period. States have indicated to the Commission and NMFS that they would implement a 30,000-lb (13.6-mt) landing limit per 2-week period (Sunday through Saturday). Because the current possession limit is 15,000 lb (6.8 mt), this measure would allow the same amount of scup to be landed in a 2-week period in 2005 as in 2004. In cases where state regulations regarding trip limits are more restrictive than the proposed 30,000-lb (13.6-mt) trip limit, the state regulations would apply. That is, vessels landing scup in states with more restrictive possession limits may need to make more than one trip to reach the 2-week limit, if that state is enforcing a 30,000-lb (13.6-mt) 2-week landing limit. The Winter I possession limit would be reduced to 1,000 lb (454 kg) when 80 percent of the quota is projected to be reached. NMFS is proposing to implement the Council's and Board's scup Winter I Federal possession limit recommendation because it would allow for the achievement of the Scup Winter I quota while reducing scup discards. NMFS is proposing to retain the current initial possession limit of 1,500 lb (680 kg) for Winter II (November-December).

Table 3 presents the 2005 commercial allocation recommended by the Council, with and without the 303,675-lb (138-mt) RSA deduction. These 2005 allocations are preliminary and may be subject to downward adjustment in the final rule implementing these specifications due to 2004 overages, based on the procedures for calculating overages described earlier.

TABLE 3. 2005 PROPOSED INITIAL TAC, COMMERCIAL SCUP QUOTA, AND POSSESSION LIMITS, IN LB (KG)

Period	Percent	TAC	Discards	Commercial Quota	Commercial Quota less RSA	Possession Limits
Winter I	45.11	6,563,505 (2,977,186)	938,288 (425,605)	5,625,217 (2,551,582)	5,518,367 (2,503,089)	30,000 ¹ (13,607)
Summer	38.95	5,667,225 (2,570,636)	810,160 (367,486)	4,857,065 (2,203,150)	4,764,806 (2,161,280)	n/a*
Winter II	15.94	2,319,270 (1,052,014)	331,522 (150,391)	1,987,718 (901,623)	1,949,962 (884,487)	1,500 (680)
Total ²	100.00	14,550,000 (6,599,837)	2,080,000 (943,482)	12,470,000 (5,656,355)	12,233,134 (5,548,856)	

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. In any year that NMFS determines that the

landings of scup during Winter I are less than the Winter I quota for that year, NMFS will, through notification in the **Federal Register**, increase the Winter II quota for that year by the amount of the Winter I underharvest, and adjust the Winter II possession limits consistent with the amount of the quota increase. The Council recommended no change in

the Winter II possession limits that result from potential rollover of quota from the Winter I period for the 2005 fishing year. Therefore, NMFS proposes to maintain the Winter II possession limit-to-rollover amount ratios specified for 2004, as presented in Table 4.

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

Initial Winter II Possession Limit		Rollover from Winter I to Winter II		Increase in Initial Winter II Possession Limit		Final Winter II Possession Limit after Rollover from Winter I to Winter II	
lb	kg	lb	mt	lb	kg	lb	kg
1,500	680	0–499,999	0–227	0	0	1,500	680
1,500	680	500,000–999,999	227–454	500	227	2,000	907
1,500	680	1,000,000–1,499,999	454–680	1,000	454	2,500	1,134
1,500	680	1,500,000–1,999,999	680–907	1,500	680	3,000	1,361
1,500	680	2,000,000–2,500,000	907–1,134	2,000	907	3,500	1,587

Other Scup Management Measures

Under the current regulations for the directed trawl fishery at § 648.123(a)(1), no owner or operator of an otter trawl vessel that is issued a scup moratorium permit may possess 500 lb (227 kg) or more of scup from November 1 through April 30, or 100 lb (45 kg) or more of scup from May 1 through October 31, unless fishing with nets that have a minimum mesh size of 4.5-inch (11.4-cm) diamond mesh for no more than 25 continuous meshes forward of the terminus of the codend, and with at least 100 continuous meshes of 5.0-inch (12.7-cm) mesh forward of the 4.5-inch (11.4-cm) mesh, and all other nets are stowed in accordance with § 648.23(b)(1). For trawl nets with codends (including an extension) of less than 125 meshes, the entire trawl net must have a minimum mesh size of 4.5 inches (11.4 cm) throughout the net.

These requirements have been in effect since February 2002 (66 FR 58097, November 20, 2001). In consideration of the increasing abundance of scup and of recent studies that indicate that discards may have increased in 2004, the Council and Board have recommended an increase in the minimum mesh size from 4.5 inches (11.4 cm) to 5 inches (12.7 cm), and an increase in the threshold level to trigger the mesh requirement from 100 lb (45 kg) to 200 lb (90 kg) for the Scup Summer period (May 1 through October 31). The recommendation was to increase the minimum mesh size to 5 inches (12.7 cm) for the 75 meshes from the terminus of the net; and for codends constructed with fewer than 75 meshes, a minimum mesh size of 5 inches (12.7 cm) throughout the net. Through this proposed rule, NMFS seeks comments on the likely effectiveness of and/or

costs associated with the proposed change in minimum mesh size for scup. The change to the minimum mesh size regulations also would apply in the Scup Gear Restricted Areas (GRAs).

Scup GRAs

In 2000, the 31st Stock Assessment Review Committee (SARC 31) emphasized the need to reduce scup mortality resulting from discards in the scup fishery and in other fisheries. In response to that recommendation, GRAs were established during the 2000 fishing year (65 FR 33486, May 24, 2000, and 65 FR 81761, Dec. 27, 2000) and modified for the 2001 fishing year (66 FR 12902, March 1, 2001). The GRAs prohibit trawl vessels from fishing for, or possessing, certain non-exempt species (*Loligo* squid, black sea bass, and silver hake (whiting)) when fishing with mesh smaller than that required to

fish for scup during the effective periods (January 1 through March 15 for the Southern GRA, and November 1 through December 31 for the Northern GRA).

For 2003, the Council recommended allowing vessels to fish for non-exempt species with small mesh in the GRAs, provided they use specially modified trawl nets and carry observers, consistent with Atlantic Coastal Cooperative Statistics Program observer standards. Instead, NMFS implemented an alternative program (the GRA Exemption Program) requiring 100-percent observer coverage for all vessels fishing with small mesh for non-exempt species in the GRAs using the modified gear. This alternative imposed significantly fewer administrative and enforcement complexities and was intended to provide more data to evaluate the effectiveness of the gear modifications (68 FR 60, January 2, 2003). NMFS maintained the GRA Exemption Program for 2004 (69 FR 2074, January 14, 2004). To date, no vessels have participated in the GRA Exemption Program.

For 2005, the Scup Monitoring Committee recommended the continuation of the GRAs with a shift of the entire Southern GRA by 3 longitudinal minutes to the west. The recommendation to move the Southern GRA follows an industry request and subsequent analysis by the NEFSC, which indicates that the shift would expose an additional 3 percent of the scup stock to small-mesh gear during the effective period, while allowing access to an additional 8 percent of the *Loligo* squid stock. Termination of the existing GRA Exemption Program also was recommended. The Council and Board adopted the Scup Monitoring Committee's recommendations. NMFS proposes to implement the Council and Board recommendations in order to allow for greater opportunity for trawl vessels to harvest *Loligo* squid while maintaining the protective aspects of the Southern GRA for scup.

Black Sea Bass

Black sea bass was last assessed in June 2004 at the 39th Northeast Regional SAW. The Stock Assessment Review Committee (SARC 39) indicated that black sea bass are no longer overfished and overfishing is not occurring. The biomass threshold is defined as the maximum value of a 3-year moving average of the NEFSC spring survey catch-per-tow (1977–1979 average of 0.9 kg/tow). The 2003 biomass index (the 3-year average for 2002–2004) is 1.4 kg/tow, about 55 percent above the threshold. Based on

this value, the stock is no longer overfished.

The target exploitation rate for 2005 is 25 percent, which is based on the current estimate of F_{max} or 0.32. Given the uncertainty in the spring survey estimates for the 2002–2004 period, and the potential underestimation of the 2003 exploitation rate, the Black Sea Bass Monitoring Committee recommended maintaining the current TAL of 8 million lb (3,629 mt) for both 2005 and 2006. The Council and Board rejected the Monitoring Committee recommendation, and instead recommended an 8.2 million-lb (3,719–mt) TAL (based on information that the stock size has increased in recent years), but for 2005 only. This TAL would be a 2.5-percent increase from 2004. NMFS is proposing to implement the Council's and Board's TAL recommendation because it is considered likely to achieve the 25-percent exploitation rate that is required by the FMP.

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 4.02 million lb (1,823 mt) to the commercial sector and 4.18 million lb (1,896 mt) to the recreational sector. The Council and Board also agreed to set aside 109,500 lb (50 mt) of the black sea bass TAL for research activities. After deducting the RSA, the TAL would be divided into a commercial quota commercial quota of 3.96 million lb (1,796 mt) and a recreational harvest limit of 4.13 million lb (1,873 mt).

In addition to the changes recommended by the Council and the Board, this proposed rule also would remove reference to a specific date by which the Summer Flounder, Scup, and Black Sea Bass Monitoring Committees shall meet for the purposes of recommending annual or multi-year TALs. These actions are intended to provide flexibility for the Council in scheduling Monitoring Committee meetings and to remove an unnecessary restriction. NMFS previously modified the text regarding Monitoring Committee meetings in §§ 648.100, 648.120, and 648.140 to reflect that annual review of updated information on the fisheries by the Monitoring Committees would not be required during the period of multi-year specifications. These regulatory changes will be effective November 29, 2004 (69 FR 62818, October 28, 2004).

Classification

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

An IRFA was prepared that describes the economic impact this proposed rule, if adopted, would have on small entities.

A description of the action, why it is being considered, and the legal basis for this action are contained in the preamble to this proposed rule. This proposed rule does not duplicate, overlap, or conflict with other Federal rules. A copy of the complete IRFA can be obtained from the Council (see **ADDRESSES**). A summary of the economic 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 2005 and 2006 summer flounder fisheries and the 2005 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 2005; (4) the existing GRA regulations would remain in place for 2005; and (5) there would be no specific cap on the allowable annual landings in these fisheries (i.e., there would be no quotas). Implementation of the no action alternative would be inconsistent with the goals and objectives of the FMP, its implementing regulations, and the Magnuson-Stevens Act. In addition, the no action alternative would substantially complicate the approved management program for these fisheries, and would very likely result in overfishing of the resources. Therefore, the no action alternative is not considered to be a reasonable alternative to the preferred action.

Alternative 1 consists of the harvest limits proposed by the Council and Board for summer flounder, scup, and black sea bass. Alternative 2 consists of the most restrictive quotas (i.e., lowest landings) considered by the Council and the Board for all of the species. Alternative 3 consists of the least restrictive quotas (i.e., highest landings) considered by the Council and Board for all three species. Although Alternative 3 would result in higher landings for 2004, it would also likely exceed the biological targets specified in the FMP.

Table 5 presents the 2005 initial TALs, RSA, commercial quotas adjusted for RSA, and preliminary recreational

harvests for the fisheries under these three quota alternatives.

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Table 5. Comparison, in lb (mt) of the alternatives of quota combinations reviewed.

	Initial TAL	RSA	Preliminary Adjusted Commercial Quota*	Preliminary Recreational Harvest Limit
Quota Alternative 1 (Preferred)				
Summer Flounder Preferred Alternative - 2005	30.3 million (13,744)	353,917 (161)	17.97 million (8,151)	11.98 million (5,434)
Summer Flounder Preferred Alternative - 2006	33.0 million (14,969)	990,000 (449)	19.21 million (8,714)	12.80 million (5,806)
Scup Preferred Alternative (Status quo)	16.5 million (7,484)	303,675 (138)	12.23 million (5,547)	3.96 million (1,796)
Black Sea Bass Preferred Alternative	8.2 million (3,719)	109,500 (50)	3.96 million (1,796)	4.13 million (1,873)
Quota Alternative 2 (Most Restrictive)				
Summer Flounder Alternative 2 (Status Quo) - 2005	28.2 million (12,791)	353,917 (161)	16.71 million (7,580)	11.14 million (5,053)
Summer Flounder Alternative 2 (Status Quo) - 2006	28.2 million (12,791)	846,000 (384)	16.41 million (7,443)	10.94 million (4,962)
Scup Alternative 2	11.0 million (4,990)	303,675 (138)	7.95 million (3,606)	2.74 million (1,242)
Black Sea Bass Alternative 2 (Status Quo)	8.0 million (3,629)	109,500 (50)	3.87 million (1,755)	4.02 million (1,823)
Quota Alternative 3 (Least Restrictive)				
Summer Flounder Alternative 3 - 2005	32.6 million (14,787)	353,917 (161)	19.35 million (8,777)	12.90 million (5,851)
Summer Flounder Alternative 3 - 2006	35.5 million (16,103)	1.07 million (485)	20.66 million (9,371)	13.77 million (6,246)
Scup Alternative 3	22.0 million (9,979)	303,675 (138)	16.53 million (7,498)	5.17 million (2,345)
Black Sea Bass Alternative 3	8.7 million (3,946)	109,500 (50)	4.21 million (1,910)	4.38 million (1,987)

* Note that preliminary quotas are provisional and may change to account for overages of the 2004 quotas.

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Table 6 presents the percent change associated with each of these commercial quota alternatives (adjusted

for RSA) compared to the final adjusted quotas for 2004.

TABLE 6. PERCENT CHANGE ASSOCIATED WITH 2005 ADJUSTED COMMERCIAL QUOTA ALTERNATIVES COMPARED TO 2004 ADJUSTED QUOTA.

	Total Changes Including Overages and RSA		
	Quota Alternative 1 (Preferred)	Quota Alternative 2 (Most Restrictive)	Quota Alternative 3 (Least Restrictive)
Summer Flounder			
Aggregate Change (2005)	+7.20%	-0.31%	+15.44%
Aggregate Change (2006)	+14.59%	-2.08%	+23.27%
Scup			

TABLE 6. PERCENT CHANGE ASSOCIATED WITH 2005 ADJUSTED COMMERCIAL QUOTA ALTERNATIVES COMPARED TO 2004 ADJUSTED QUOTA.—Continued

	Total Changes Including Overages and RSA		
	Quota Alternative 1 (Preferred)	Quota Alternative 2 (Most Restrictive)	Quota Alternative 3 (Least Restrictive)
Aggregate Change	-0.85%*	-35.60%	+33.90%
Black Sea Bass			
Aggregate Change	+5.32%	+2.93*	+11.97%

*Denotes status quo management measures.

All vessels that would be impacted by this proposed rulemaking are considered to be small entities; therefore, there would be no disproportionate impacts between large and small entities. 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 2005 quotas (and 2006 summer flounder quota) could affect 2,114 vessels that held a Federal summer flounder, scup, and/or black sea bass permit in 2003. However, the more immediate impact of this rule will likely be felt by the 1,040 vessels that actively participated (i.e., landed these species) in these fisheries in 2003.

The Council estimated the total revenues derived from all species landed by each vessel during calendar year 2003 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 2004 to 2005 (and 2006 for the summer flounder fishery).

The Council's analysis of the harvest limits in Alternative 1 (Preferred Alternative) indicated that these harvest levels would produce a revenue increase for 1,000 commercial vessels that are expected to be impacted by this rule. Up to 40 vessels that derive a large proportion of their revenues from scup were projected to incur small revenue losses (i.e., less than 5 percent) due to the decrease in the adjusted scup quota that results from the increase in scup GRA proposed for 2005. No vessels were expected to have revenue losses of greater than 5 percent.

The Council also analyzed changes in total gross revenue that would occur as a result of the quota alternatives. Assuming 2003 ex-vessel prices (summer flounder—\$1.61/lb; scup—\$0.60/lb; and black sea bass—\$2.02/lb),

the 2005 quotas in Preferred Alternative 1 would increase total summer flounder and black sea bass revenues by approximately \$1.9 million and \$165,000, respectively, and decrease scup revenues by approximately \$60,000, relative to expected 2004 revenues.

Assuming that the total ex-vessel gross revenue associated with the Preferred Alternative for each fishery is distributed equally among the vessels that landed those species in 2003, the average change in gross revenue per vessel associated with the preferred quota would be a \$2,322 increase for summer flounder, a \$106 decrease for scup, and a \$546 increase for black sea bass. The number of vessels landing summer flounder, scup, and black sea bass in 2003 was 839, 566, and 702, respectively.

The overall increase in gross revenue associated with the three species combined in 2005 compared to 2004 is approximately \$2.3 million (assuming 2003 ex-vessel prices) under the Preferred Alternative. If this amount is distributed equally among the 1,040 vessels that landed summer flounder, scup, and/or black sea bass in 2003, the average increase in revenue would be approximately \$2,184 per vessel.

Complete revenue analysis for 2006 cannot be completed at this time because the Council is recommending the 2006 TAL for summer flounder only. Based on the proposed 2006 TAL for summer flounder, and assuming 2003 ex-vessel price (\$1.61 per lb), ex-vessel revenue would increase by approximately \$3.9 million relative to 2004. Assuming the increase in summer flounder total ex-vessel gross revenue associated with the preferred alternative is distributed equally among the 839 vessels that landed summer flounder in 2003, the average increase in revenue associated with the increase in summer flounder TAL is \$4,701 per vessel. The change in gross revenues associated with the potential changes in landings in 2006 versus 2004 assume static prices for summer flounder. However, if ex-

vessel prices for this species change as a consequence of changes in landings, then the associated revenue changes could be different than those estimated above. Complete revenue analysis for the 2006 fishing year will be conducted as part of the proposed rule for the 2006 summer flounder, scup, and black sea bass specifications, once the Council recommends TAL's for scup and black sea bass.

The Council's analysis of the harvest limits of Alternative 2 (i.e., the most restrictive harvest limits) indicated that these harvest limits would produce a revenue increase for 191 commercial vessels, primarily because a large proportion of their revenues were derived from black sea bass, and a revenue loss for the other 935 commercial vessels expected to be impacted by this proposed rule. Assuming 2003 ex-vessel prices as described above, the 2005 quotas in Alternative 2 would increase total black sea bass revenues by approximately \$202,000, and decrease total summer flounder and scup revenues by approximately \$81,000 and \$2.6 million, respectively, relative to expected 2004 revenues.

Assuming that the total ex-vessel gross revenue associated with Alternative 2 is distributed equally among the vessels that landed those species in 2003, the average change in gross revenue per vessel associated with Alternative 2 would be a \$95 decrease for summer flounder, a \$4,654 decrease for scup, and a \$288 increase for black sea bass.

The overall reduction in gross revenue associated with the three species combined in 2005 compared to 2004 is approximately \$2.5 million (assuming 2003 ex-vessel prices) under Alternative 2. If this amount is distributed equally among the 1,040 vessels that landed summer flounder, scup, and/or black sea bass in 2003, the average decrease in revenue would be approximately \$2,416 per vessel.

The Council's analysis of the harvest limits of Alternative 3 (i.e., the least

restrictive harvest limits) indicated that these harvest limits would produce a revenue increase for all 1,040 commercial vessels. Assuming 2003 ex-vessel prices as described above, the 2005 quotas in Alternative 3 would increase total summer flounder, scup, and black sea bass revenues by approximately \$4.2 million, \$2.5 million, and \$889,000, respectively, relative to expected 2004 revenues.

Assuming that the total ex-vessel gross revenue associated with Alternative 3 is distributed equally among the vessels that landed those species in 2003, the average increase in gross revenue per vessel associated with Alternative 3 would be \$4,790 for summer flounder, \$4,442 for scup, and \$1,266 for black sea bass.

The overall increase in gross revenue associated with the three species combined in 2005 compared to 2004 is approximately \$7.6 million (assuming 2003 ex-vessel prices) under Alternative 3. If this amount is distributed equally among the 1,040 vessels that landed summer flounder, scup, and/or black sea bass in 2003, the average increase in revenue would be approximately \$7,281 per vessel.

The Council also prepared an analysis of the alternative recreational harvest limits. The 2005 recreational harvest limits were compared with previous years through 2003, the most recent year with complete recreational data.

Landing statistics from the last several years show that recreational summer flounder landings have generally exceeded the recreational harvest limits, ranging from a 5-percent overage in 1993 to a 122-percent overage in 2000. In 2001, summer flounder recreational landings were 11.64 million lb (5,280 mt), exceeding the harvest limit of 7.16 million lb (3,248 mt) by 63 percent. In 2002, recreational landings were 8.01 million lb (3,633 mt), 18 percent below the recreational harvest limit of 9.72 million lb (4,409 mt). In 2003, recreational landings were 11.61 million lb (5,266 mt), 4 percent above the recreational harvest limit of 9.32 million lb (4,228 mt).

The Alternative 1 summer flounder 2005 and 2006 preferred recreational harvest limits (adjusted for RSA) of 11.98 million lb (5,434 mt) and 12.80 million lb (5,806 mt), respectively, would be a 6-percent and 14-percent increase, respectively, from the 2004 recreational harvest limit of 11.21 million lb (5,085 mt), and would represent a 3-percent and 10-percent increase, respectively, from 2003 landings. The 2005 and 2006 summer flounder Alternative 2 (status quo alternative) recreational harvest limits of

11.14 million lb (5,053 mt) and 10.94 million lb (4,962 mt), respectively, would be less than 1 percent and 3 percent lower, respectively, than the 2004 recreational harvest limit, and would represent a 4-percent decrease and a 6-percent decrease, respectively, from 2003 recreational landings. The 2005 and 2006 summer flounder Alternative 3 recreational harvest limits of 12.90 million lb (5,851 mt) and 13.77 million lb (6,246 mt), respectively, would be a 15-percent and 23-percent increase, respectively, from the 2004 recreational harvest limit and would represent an 11-percent increase and a 19-percent increase, respectively, from 2003 recreational landings. If Alternative 1, 2, or 3 is chosen, it is possible that more restrictive management measures may be required to prevent anglers from exceeding the 2005 and 2006 recreational harvest limits, depending upon the effectiveness of the 2004 recreational management measures. More restrictive regulations could affect demand for party/charter boat trips. However, the market demand for this sector currently is stable, so the effects may be minimal. Currently, neither behavioral or demand data are available to estimate how sensitive party/charter boat anglers might be to proposed fishing regulations. Overall, it is expected that positive social and economic impacts would occur as a result of the proposed 6-percent (for 2005) and 14-percent (for 2006) increase in the recreational harvest limit, relative to 2004 because of the increase in fishing opportunities. The Council intends to recommend specific measures to attain the 2005 summer flounder recreational harvest limit in December 2004, and will provide additional analysis of the measures upon submission of its recommendations in early 2005. Similarly, the Council will recommend 2006 recreational management measures in December 2005.

Scup recreational landings declined over 89 percent for the period 1991 to 1998, then increased by 517 percent from 1998 to 2000. In 2002, recreational landings were 3.62 million lb (1,642 mt), or 33 percent above the recreational harvest limit of 2.71 million lb (1,229 mt). In 2003, recreational landings were 9.33 million lb (4,232 mt), or 132 percent above the recreational harvest limit of 4.01 million lb (1,819 mt). Under the Preferred Alternative, the adjusted scup recreational harvest limit for 2005 would be 3.96 million lb (1,796 mt), 1 percent lower than the 2004 recreational harvest limit, and would represent a 57-percent decrease from

2003 recreational landings. The Alternative 2 scup recreational harvest limit of 2.74 million lb (1,242 mt) for 2005 would be 32 percent less than the 2004 recreational harvest limit, and 71 percent less than 2003 recreational landings. The Alternative 3 scup recreational harvest limit of 5.17 million lb (2,345 mt) for 2005 would be an increase of 30 percent from the 2004 recreational harvest limit and would represent a 45-percent decrease from 2003 recreational landings. With Alternative 2, and possibly Alternative 1, more restrictive management measures might be required to prevent anglers from exceeding the 2004 recreational harvest limit, depending largely upon the effectiveness of the 2004 recreational management measures. As described above for the summer flounder fishery, the effect of greater restrictions on scup party/charter boats is unknown at this time. Although the proposed recreational harvest limit is approximately 30,000 lb (13.6 mt) less than the adjusted limit for 2004, because it is only a marginal difference from the current harvesting limit, it is not likely that more effort controls (e.g., bag limits) will be required to constrain 2005 recreational landings. Overall, positive social and economic impacts are expected to occur as a result of the scup recreational harvest limit for 2005 because current opportunities for recreational fishing would be maintained. The Council intends to recommend specific measures to attain the 2005 scup recreational harvest limit in December 2004, and will provide additional analysis of the measures upon submission of its recommendations early in 2005.

Black sea bass recreational landings increased slightly from 1991 to 1995. Landings decreased considerably from 1996 to 1999, and then substantially increased in 2000. In 2001, 2002, and 2003, recreational landings were 3.42 million lb (1,551 mt), 4.46 million lb (2,023 mt), and 4.26 million lb (1,932 mt), respectively. For the recreational fishery, the adjusted 2005 harvest limit under Alternative 1 would be 4.13 million lb (1,873 mt), a 3-percent increase from the 2004 recreational harvest limit and a 3-percent decrease from 2003 recreational landings. Under Alternative 2, the 2005 recreational harvest limit would be 4.02 million lb (1,823 mt), a less than 1-percent increase from the 2004 recreational harvest limit and a 6-percent decrease from 2003 recreational landings. The 2005 recreational harvest limit under Alternative 3 would be 4.38 million lb

(1,986 mt), a 9-percent increase from the 2004 recreational harvest limit and a 3-percent increase from 2003 recreational landings. Each of the three alternatives would likely result in positive economic impacts on the recreational fishery because of an increase in fishing opportunities. The Council intends to recommend specific measures to attain the 2005 black sea bass recreational harvest limit in December 2004, and will provide additional analysis of the measures upon submission of its recommendations early in 2005. Overall, positive social and economic impacts are expected to occur as a result of the preferred black sea bass recreational harvest limit for 2004 because of the increase in fishing opportunities.

In summary, the 2005 commercial quotas and recreational harvest limits contained in the Preferred Alternative, after accounting for the proposed RSA amounts, would result in substantially higher summer flounder and black sea bass landings and a small decrease in scup landings, relative to 2004. The proposed specifications contained in the Preferred Alternative were chosen because they allow for the maximum level of landings, while still achieving the fishing mortality and exploitation targets specified in the FMP. While the commercial quotas and recreational harvest limits specified in Alternative 3 would provide for even larger increases in landings and revenues, they would not achieve the fishing mortality and exploitation targets specified in the FMP.

The proposed commercial scup possession limits for Winter I (30,000 lb (13.6 mt) per trip) and Winter II (1,500 lb (680 kg) per trip) were chosen as an appropriate balance between the economic concerns of the industry (i.e., landing enough scup to make the trip economically viable) and the need to ensure the equitable distribution of the quota over the period. The proposed Winter I possession limit was selected specifically to coordinate with the 30,000 lb (13.6 mt) landing limits per 2-week period recommended by the Commission to be implemented by most states while satisfying concerns about enforcement of possession limits. Changes in possession limits can impact profitability in various ways. These impacts would vary depending on fishing practices. These possession limits are expected to constrain commercial landings to the commercial TAL, and distribute landings equitably throughout the periods to avoid derby-style fishing effort and associated market gluts. According to anecdotal

information, potential price fluctuations occur as result of irregular supply. The recommended possession limits for Winter I would allow fishermen to determine the best time for them to fish and further help to avoid market gluts and unsafe fishing practices. The recommended possession limit is the maximum possible possession limit that fits within the landing limit constraint being imposed by the states under the aegis of the Commission (a landing limit of 30,000 lb (13.6 mt) per 2-week period). Therefore, there would be no marginal benefit associated with any possession limit higher than 30,000 lb (13.6 mt) that the Council might have considered. And, because any possession limit that the Council might have considered less than 30,000 lb (13.6 mt) would have imposed a constraint on the industry, potentially preventing them from taking full advantage of the states' landing limit, the proposed Winter I possession limit is the alternative that would result in the most beneficial economic impacts to the industry.

Maintaining the current mesh size and the current threshold level to trigger the mesh requirement for the scup fishery would not be expected to change the economic or social impacts in 2005 compared to 2004. However, the proposed actions to increase the minimum scup mesh size from 4.5 in (11.4 cm) to 5.0 in (12.7 cm) and the related threshold trigger from 100 lb (45 kg) to 200 lb (90 kg) would have positive socioeconomic impacts as they would allow for a reduction in the discard of undersized fish, thus improving the efficiency of the commercial scup fishery compared to the status quo. The cost to the industry to implement the change in minimum mesh size is expected to be minimal due to the configuration of the nets subject to this change. The current regulations allow for 4.5-in (11.4-cm) mesh in the codend of a net for no more than 25 meshes from the terminus of the net. Forward of this codend, at least 100 meshes must be 5.0-in (12.7-cm) mesh. To implement the proposed change, all that would be required in these nets is the removal of the 4.5-in (11.4-cm) codend and closing off the remaining 5.0-in (12.7-cm) mesh. Increasing the minimum mesh size to something larger than 5.0 in (12.7 cm) would require much more significant changes in net configuration and would result in more significant costs to the industry. Maintaining the status quo mesh size, or decreasing the minimum mesh to something smaller than 4.5 in (11.4 cm), would eliminate any need for the industry to alter net

configurations, but would also forgo the opportunity to increase the efficiency of the fishery by reducing discards of small scup and other species currently caught in the 4.5-in (11.4-cm) mesh nets. The Council therefore determined that the preferred scup mesh size and threshold level minimize negative economic impacts on the industry.

The costs and benefits of allowing vessels using small-mesh experimental nets to fish in the GRAs under the GRA Exemption Program were described in the proposed rule (67 FR 70904, November 27, 2002) and the final rule (68 FR 60, January 2, 2003) implementing the 2003 specifications. Those impacts are not repeated here. Given that no fishing vessels have participated in the GRA Exemption Program since its implementation, its elimination is not expected to result in changes to the economic and social aspects of the fishery compared to the status quo alternative.

Under the status quo alternative for the scup Southern GRA, socioeconomic impacts are expected to be similar to those in previous years. Moving the Southern GRA 3 minutes westward is expected to result in positive socioeconomic impacts, relative to the status quo, due to increased availability of *Loligo* to participants in the small-mesh trawl fishery. Trawl survey data indicate that the westward shift of the Southern GRA could result in a 3-percent increase in the capture of scup, a 5-percent increase in black sea bass capture, and an 8-percent increase in *Loligo* capture. The Council also considered an alternative to redefine the seaward boundary of the Southern GRA so that it would approximate the 50-fathom (91.4-m) bathymetric contour, thus making an additional 1,455-nm² area available for the small-mesh trawl fishery. It is estimated that this change would result in a 31-percent increase in the capture of scup, a 40-percent increase in black sea bass capture, and an 21-percent increase in *Loligo* capture. This second alternative was not selected because, as indicated by the Council, losses in estimated protection under this alternative would likely have a diminishing effect on any positive impacts accumulated thus far, such that the Southern GRA would be less likely to function adequately as a protective mechanism for scup and black sea bass.

The commercial portion of the summer flounder RSA allocations in the Preferred Alternative, if made available to the commercial fishery, could be worth as much as \$341,884 (for 2005) and \$956,340 (for 2006) dockside, based on a 2003 ex-vessel price of \$1.61/lb. Assuming an equal reduction in fishing

opportunity among all active vessels (i.e., the 839 vessels that landed summer flounder in 2003), this could result in a per-vessel potential revenue loss of approximately \$407 (for 2005) and \$1,140 (for 2006). Because information pertaining to RSA projects for 2006 is not yet known, the per-vessel revenue loss for 2006 is likely overestimated because the RSA allocation assumed for 2006 represents the maximum allowable allocation (3 percent of the TAL). The Council to date has never utilized the maximum allowable RSA allocation, so it is expected that at least some of the assumed RSA allocation would ultimately be added back into the commercial quota for 2006. Changes in the summer flounder recreational harvest limit as a result of the 353,917-lb (79-mt) RSA are not expected to be significant as the deduction of RSA from the TAL would result in a relatively marginal decrease in the recreational harvest limit from 12.1 million lb (5,489 mt) to 12 million lb (5,443 mt) for 2005 and from 13.2 million lb (5,987 mt) to 12.8 million lb (5,805 mt) for 2006. 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.

The scup RSA allocation in the Preferred Alternative, if made available to the commercial fishery, could be worth as much as \$142,119 dockside, based on a 2003 ex-vessel price of \$0.60/lb. Assuming an equal reduction in fishing opportunity for all active commercial vessels (i.e., the 566 vessels that landed scup in 2003), this could result in a loss of potential revenue of approximately \$251 per vessel. The deduction of RSA from the TAL results in a relatively marginal decrease in the recreational harvest limit from 4.03 million lb (1,828 mt) to 3.96 million lb (1,796 mt). It is unlikely that scup recreational possession, size, or seasonal limits would change as the result of the RSA allocation because the reduction in the harvest limit is so small.

The black sea bass RSA allocation in the Preferred Alternative, if made available to the commercial fishery, could be worth as much as \$108,383 dockside, based on a 2003 ex-vessel price of \$2.02/lb. Assuming an equal reduction in fishing opportunity for all active commercial vessels (i.e., the 702 vessels that caught black sea bass in 2003), this could result in a loss of approximately \$154 per vessel. The deduction of RSA from the TAL would result in a relatively marginal decrease in recreational harvest from black sea bass recreational harvest limit from 4.18 million lb (1,896 mt) to 4.13 million lb

(1,873 mt). It is unlikely that the black sea bass possession, size, or seasonal limits would change as the result of this RSA allocation because the reduction in the harvest limit is so small.

Overall, long-term benefits are expected as a result of the RSA program due to improved fisheries data and information. 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.

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

List of Subjects in 50 CFR Part 648

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: December 1, 2004.

William T. Hogarth,

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 § 648.14, paragraph (a)(127) is removed and reserved, and paragraph(a)(122) is revised to read as follows:

§ 648.14 Prohibitions.

(a) * * *

(122) Fish for, catch, possess, retain or land Loligo squid, silver hake, or black sea bass in or from the areas and during the time periods described in § 648.122(a) or (b) while in possession of any trawl nets or netting that do not meet the minimum mesh restrictions or that are obstructed or constricted as specified in §§ 648.122 and 648.123(a), unless the nets or netting are stowed in accordance with § 648.123(b).

* * * * *

(127) [Reserved]

3. In § 648.100, paragraph (a) is revised to read as follows:

§ 648.100 Catch quotas and other restrictions.

(a) *Review.* The Summer Flounder Monitoring Committee shall review

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

* * * * *

4. In § 648.120, paragraph (a) is revised to read as follows:

§ 648.120 Catch quotas and other restrictions.

(a) *Review.* The Scup Monitoring Committee shall review each year the following data, subject to availability, unless a TAL already has been established for the upcoming calendar year as part of a multiple-year specification process, provided that new information does not require a modification to the multiple-year quotas: Commercial, recreational, and research data; current estimates of fishing mortality; stock status; recent estimates of recruitment; virtual population analysis results; levels of noncompliance by fishermen or individual states; impact of size/mesh regulations; impact of gear on the mortality of scup; and any other relevant information. This review will be conducted to determine the allowable levels of fishing and other restrictions necessary to achieve the F that produces the maximum yield per recruit (F_{max}).

* * * * *

5. In § 648.122, paragraph (d) is removed and reserved, and the section heading, paragraph (a)(1), and the first two sentences of paragraph (b)(1) are revised to read as follows:

§ 648.122 Season and area restrictions.

(a) * * *

(1) * * * From January 1 through March 15, all trawl vessels in the

Southern Gear Restricted Area that fish for or possess non-exempt species as specified in paragraph (a)(2) of this section must fish with nets that have a minimum mesh size of 5.0-inch (12.7-cm) diamond mesh, applied throughout the codend for at least 75 continuous meshes forward of the terminus of the net. For trawl nets with codends (including an extension) of fewer than 75 meshes, the entire trawl net must have a minimum mesh size of 5.0 inches (12.7 cm) throughout the net. The Southern Gear Restricted Area is an area bounded by straight lines connecting the following points in the order stated (copies of a chart depicting the area are available from the Regional Administrator upon request):

SOUTHERN GEAR RESTRICTED AREA

Point	N. Lat.	W. Long.
SGA1	39° 20'	72° 53'
SGA2	39° 20'	72° 28'
SGA3	38° 00'	73° 58'
SGA4	37° 00'	74° 43'
SGA5	36° 30'	74° 43'
SGA6	36° 30'	75° 03'
SGA7	37° 00'	75° 03'
SGA8	38° 00'	74° 23'
SGA1	39° 20'	72° 50'

(b) * * *

(1) * * * From November 1 through December 31, all trawl vessels in the Northern Gear Restricted Area I that fish for or possess non-exempt species as specified in paragraph (b)(2) of this section, 5.0-inch (12.7 cm) diamond

mesh, applied throughout the codend for at least 75 continuous meshes forward of the terminus of the net. For trawl nets with codends (including an extension) of fewer than 75 meshes, the entire trawl net must have a minimum mesh size of 5.0 inches (12.7 cm) throughout the net. * * *

* * * * *

(d) [Reserved]

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6. In § 648.123, paragraph (a)(1) is revised to read as follows:

§ 648.123 Gear restrictions.

(a) * * *

(1) *Minimum mesh size.* No owner or operator of an otter trawl vessel that is issued a scup moratorium permit may possess 500 lb (226.8 kg) or more of scup from November 1 through April 30, or 200 lb (90.7 kg) or more of scup from May 1 through October 31, unless fishing with nets that have a minimum mesh size of 5.0-inch (12.7-cm) diamond mesh, applied throughout the codend for at least 75 continuous meshes forward of the terminus of the net, and all other nets are stowed in accordance with § 648.23(b)(1). For trawl nets with codends (including an extension) of fewer than 75 meshes, the entire trawl net must have a minimum mesh size of 5.0 inches (12.7 cm) throughout the net. Scup on board these vessels must be stowed separately and kept readily available for inspection. Measurement of nets will be in conformity with § 648.80(f)(2)(ii).

* * * * *

7. In § 648.140, paragraph (a) is revised to read as follows:

§ 648.140 Catch quotas and other restrictions.

(a) *Review.* The Black Sea Bass Monitoring Committee shall review each year the following data, subject to availability, unless a TAL already has been established for the upcoming calendar year as part of a multiple-year specification process, provided that new information does not require a modification to the multiple-year quotas, to determine the allowable levels of fishing and other restrictions necessary to result in a target exploitation rate of 23 percent (based on F_{max}) in 2003 and subsequent years: Commercial, recreational, and research catch data; current estimates of fishing mortality; stock status; recent estimates of recruitment; virtual population analysis results; levels of noncompliance by fishermen or individual states; impact of size/mesh regulations; sea sampling and winter trawl survey data, or if sea sampling data are unavailable, length frequency information from the winter trawl survey and mesh selectivity analyses; impact of gear other than otter trawls, pots and traps on the mortality of black sea bass; and any other relevant information.

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[FR Doc. 04-26724 Filed 12-3-04; 8:45 am]

BILLING CODE 3510-22-S