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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 121009528-2601-01]

RIN 0648-XC287

Fisheries of the Northeastern United States; Summer Flounder, Scup, and Black Sea Bass

Fisheries; 2013-2014 Summer Flounder, 2013-2014 Scup, and 2013 Black Sea Bass

Specifications; 2013 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 2013 summer flounder, scup, and black sea bass fisheries, and the 2014 summer flounder and scup fisheries, and provides notice of two projects that may be requesting exempted fishing permits as part of the Mid-Atlantic Fishery Management Council's Research Set-Aside Program. The implementing regulations for the Summer Flounder, Scup, and Black Sea Bass Fishery Management Plan 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 require that NMFS allow the public an opportunity to comment on applications for exempted fishing permits. Accordingly, in addition to proposing catch specifications, NMFS announces exempted fishing permit requests, in accordance with the

fishery management plan and Magnuson-Stevens Fishery Conservation and Management Act.

DATES: Comments must be received on or before [insert date 15 days after the date of publication in the FEDERAL REGISTER].

ADDRESSES: An environmental assessment (EA) was prepared for the specifications and describes the proposed action and other considered alternatives, and provides an analysis of the impacts of the proposed measures and alternatives. Copies of the Specifications Document, including the EA and the Initial Regulatory Flexibility Analysis (IRFA), are available on request 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>.

You may submit comments, identified by NOAA-NMFS-2012-0201, by any one of the following methods:

- Electronic Submissions: Submit all electronic public comments via the Federal e-Rulemaking Portal at <http://www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2012-0201>. Clicking the preceding link will bring you to the NOAA-NMFS-2012-0201 docket folder for this action. To submit comments once in the docket folder, click the “Comment Now!” icon. Fill in the fields on the comment form and enter or attach your comment.
- Fax: (978) 281-9135, Attn: Moira Kelly.
- Mail: John Bullard, Regional Administrator, NMFS, Northeast Regional Office, 55 Great Republic Drive, Gloucester, MA 01930. Mark the outside of the envelope, “Comments on FSB Specifications.”

Instructions: Comments must be submitted by one of the above methods to ensure that the comments are received, documented, and considered by NMFS. Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered. All comments received are a part of the public record and will generally be posted for public viewing on [www.regulations.gov](http://www.regulations.gov). All personal identifying information (e.g., name, address, etc.) submitted voluntarily by the sender will 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). Attachments to electronic comments will be accepted in Microsoft Word or Excel, WordPerfect, or Adobe PDF file formats only.

FOR FURTHER INFORMATION CONTACT: Moira Kelly, Fishery Policy Analyst, (978) 281-9218.

#### SUPPLEMENTARY INFORMATION:

##### General Specification Background

The Mid-Atlantic Fishery Management Council (Council) and the Atlantic States Marine Fisheries Commission (Commission) cooperatively manage the summer flounder, scup, and black sea bass fisheries. Fishery specifications in these fisheries include various catch and landing subdivisions, such as the commercial and recreational sector annual catch limits (ACLs), annual catch targets (ACTs), sector-specific landing limits (i.e., the commercial fishery quota and recreational harvest limit (RHL)), and research set-aside (RSA) established for the upcoming fishing year. An explanation of each subdivision appears later in this rule.

Rulemaking for measures used to manage the recreational fisheries for these three species

occurs separately and typically takes place in the first quarter of the fishing year. The Summer Flounder, Scup, and Black Sea Bass Fishery Management Plan (FMP) and its implementing regulations establish the Council's process for establishing specifications. All requirements of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), including the 10 national standards, also apply to specifications.

The management units specified in the FMP include summer flounder (Paralichthys dentatus) in U.S. waters of the Atlantic Ocean from the southern border of North Carolina northward to the U.S./Canada border, and scup (Stenotomus chrysops) and black sea bass (Centropristis striata) in U.S. waters of the Atlantic Ocean from 35° 13.3' N. lat. (the latitude of Cape Hatteras Lighthouse, Buxton, NC) northward to the U.S./Canada border.

The Council's Scientific and Statistical Committee (SSC) met on July 25 and 26, 2012, to recommend acceptable biological catches (ABC) for the 2013-2015 summer flounder, scup, and black sea bass fisheries. 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, Scup, and Black Sea Bass Monitoring Committees met on July 27, 2012, to discuss specification-related recommendations for the three fisheries.

Following the SSC and Monitoring Committee meetings, the Council and the

Commission’s Summer Flounder, Scup, and Black Sea Bass Management Board (Board) considered the recommendations of the SSC, the three monitoring committees, and public comments, and made their specification recommendations at a meeting held on August 15, 2012. While the Board action was finalized at the August meeting, the Council’s recommendations must be reviewed by NMFS to ensure 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.

Table 1. Summary of the Proposed 2013-2014 Specifications

		Summer Flounder		Scup		Black Sea Bass
		2013	2014	2013	2014	2013
<b>ABC</b>	million lb	22.34	22.24	38.71	35.99	4.50
	mt	10,133	10,088	17,557	16,325	2,041
<b>Commercial ACL</b>	million lb	12.11	12.05	30.19	28.07	2.13
	mt	5,491	5,467	13,694	12734	966
<b>Recreational ACL</b>	million lb	10.23	10.19	8.52	7.92	2.37
	mt	4,642	4,621	3,863	3,592	1,075
<b>Commercial ACT</b>	million lb	12.11	12.05	30.19	28.07	2.13
	mt	5,491	5,467	13,694	12734	966
<b>Recreational ACT</b>	million lb	10.23	10.19	8.52	7.92	2.37
	mt	4,642	4,621	3,863	3,592	1,075
<b>Commercial Quota</b>	million lb	11.44	11.39	23.53	21.95	1.78
	mt	5,189	5,166	10,671	9,955	805
<b>RHL</b>	million lb	7.63	7.59	7.55	7.03	1.85

	mt	3,459	3,444	3,425	3,188	838
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Note: Commercial Quotas and RHLs include the 3-percent RSA reduction

### Explanation of RSA

In 2001, NMFS implemented regulations 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 to support scientific research. NMFS intends to conditionally approve two research projects to harvest a portion of the set-aside quota that has been recommended by the Council and the Commission. In anticipation of receiving applications for exempted fishing permits (EFP) 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 2013 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 2013 specifications for the summer flounder, scup, black sea bass, longfin squid, butterfish, and Atlantic bluefish fisheries. If the total amount of available RSA is not awarded, NMFS will publish a document in the Federal Register to restore the unused amount to the applicable TAL.

For 2013, the conditionally approved projects may collectively be awarded up to the

following amounts of RSA: 589,880 lb (267.6 mt) of summer flounder; 961,200 lb (436 mt) of scup; 111,900 lb (51 mt) of black sea bass; 1,145,711 lb of longfin squid; 332,898 lb of butterfish; and 715,830 lb of bluefish. For 2014, projects may collectively be awarded up to 587,100 lb (266 mt) of summer flounder and 896,100 lb (404 mt) of scup. The harvest of RSA quota would occur January 1-December 31, 2013, and January 1-December 31, 2014, 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.

2013 RSA Proposal Summaries: Because the research activities of project number one will be analyzed through a separate environmental assessment and a separate consultation process under the Endangered Species Act, only a brief description of the project is included here. A more detailed description will be published in the Federal Register at such time as the environmental analysis is completed. For informational purposes, project number one would conduct a spring and fall monitoring (trawl) survey in shallow waters between Martha's Vineyard, MA, and Cape Hatteras, NC. The project investigators plan to provide stock assessment data for Mid-Atlantic RSA species, including summer flounder, scup, black sea bass, longfin squid, butterfish, and Atlantic bluefish, and assessment-quality data for weakfish,

Atlantic croaker, spot, several skate and ray species, smooth dogfish, horseshoe crab, and several unmanaged but important forage species.

Project number two is a fishery-independent black sea bass survey of four separate hard bottom sites in Southern New England and Mid-Atlantic waters. Unvented black sea bass pots would be fished on each site for 5 months from June through October in Southern New England, and April through August in the Mid-Atlantic. The project is designed to collect black sea bass from areas un-sampled by current state and Federal finfish bottom trawl surveys. The length frequency distribution of the catch will be compared statistically to each of the other collection sites, and to finfish trawl data collected by NMFS and state agencies. Black sea bass would be collected from four general zones along the coast utilizing black sea bass pots made with coated wire mesh, single mesh entry head, and single mesh inverted parlor nozzle. The four general zones will include one in Massachusetts, one south of Rhode Island, one south of New Jersey, and one south of Virginia. This particular configuration is being proposed as it generally corresponds to the northern and southern core range of the species, and each is an area in which a major black sea bass fishery takes place. In each of these general zones, four individual sampling sites would be selected, each of which would be 1 square mile (2.6 km<sup>2</sup>) in size. Each of the individual sampling sites would be separated by at least 4 miles (6.4 km) in order to provide adequate spatial coverage. Specific sampling sites within each square mile sampling site would be randomly selected each month from the sub-blocks. The traps would be set at the center of each sampling site once per month. The sampling protocol would require that a commercial vessel take 30 pots (three 10-pot trawls) to each of the randomly selected hard bottom sampling sites. This procedure would continue each month during the sampling season



for 5 months. Thus, 16 locations would be sampled monthly. Pots would be un-baited and allowed to remain in place for a minimum of 4 days. The date, area, depth, set over days, and catch would be recorded and fish measured utilizing the standard NMFS sea sampling protocols. Fish would be measured excluding the tail tendril, which is the NMFS/ASMFC standard. At the conclusion of each sampling cycle, pots would be placed on the vessel for transport back to port.

Research vessels for project number two would require an EFP for exemption from minimum scup and black sea bass pot vent size requirements to ensure that black sea bass length frequency data are representative and not biased. If a participating vessel holds a Federal lobster permit, it would need exemption from lobster pot vent size requirements. Exemption from scup and black sea bass closures and time restrictions would also be needed to ensure the survey is not disrupted by such regulations. Exemption from scup and black sea bass minimum fish sizes and possession limits would also be needed for data collection purposes only. All undersized fish would be discarded as soon as practicable to minimize mortality, and fish in excess of possession limits would either be discarded as soon as practicable or landed as RSA quota.

#### Summer Flounder

The summer flounder stock was declared rebuilt in 2011. The stock assessment update utilized to derive specification recommendations indicates that summer flounder were not overfished and that overfishing did not occur in 2011, the most recent year of available data. This stock assessment update did, however, indicate that biomass is currently lower than in recent years. This results in catch limits that are lower than 2012 (Table 1).

The overfishing limit (OFL) for 2012 was estimated to be 29.81 million lb (13,523 mt). Based on this information, the SSC recommended to the Council that the 2013 ABC for summer

flounder be set no higher than 22.34 million lb (10,133 mt), and, using a strategy of a constant fishing rate, that the 2014 ABC for summer flounder be set no higher than 22.24 million lb (10,088 mt). The SSC did not provide an ABC recommendation for 2015 because it is expected that a benchmark assessment for summer flounder will be conducted in 2013 and it would be more appropriate to wait for that assessment before making a 2015 recommendation.

Consistent with the summer flounder regulations, the sum of the recreational and commercial sector ACLs is equal to ABC. ACL is an expression of total catch (i.e., landings and dead discarded fish). To derive the ACLs, the sum of the sector-specific estimated discards is removed from the ABC to derive the landing allowance. The resulting landing allowance is apportioned to the commercial and recreational sectors by applying the FMP allocation criteria: 60 percent to the commercial fishery and 40 percent to the recreational fishery. Using this method ensures that each sector is accountable for its respective discards, rather than simply apportioning the ABC by the allocation percentages to derive the sector ACLs. Although the derived ACLs are not split exactly at 60/40, the landing portions of the ACLs preserve the 60/40 allocation split, consistent with the FMP. This process results in a commercial ACL of 12.11 million lb (5,491 mt) for 2013 and 12.05 million lb (5,467 mt) for 2014. The recreational ACLs would be 10.23 million lb (4,642 mt) for 2013 and 10.19 million lb (4,621 mt) for 2014.

The Summer Flounder Monitoring Committee met to discuss the SSC's recommendations and to determine if additional reductions in the catch limits were necessary to account for management uncertainty. Because the recreational fishery in recent years has not reached the RHL, discards in the commercial fishery have been relatively low, and the landings monitoring and fishery closure system is timely, the Summer Flounder Monitoring Committee

determined that no additional reductions to account for management uncertainty were necessary. Therefore, it was recommended that the ACTs (both commercial and recreational) should be set equal to their respective ACL for both 2013 and 2014. Removing the estimated discards and, as recommended, 3 percent of the TAL for RSA, the commercial summer flounder quotas would be 11.44 million lb (5,189 mt) for 2013 and 11.39 million lb (5,166 mt) for 2014. The RHLs would be 7.63 million lb (3,459 mt) for 2013 and 7.59 million lb (3,444 mt) for 2014.

Table 2: Proposed Summer Flounder Specifications

Year		ABC	Commercial ACL	Recreational ACL	Comm. ACT	Rec. ACT	Comm. Quota (minus 3% RSA)	RHL (minus 3% RSA)
2012	million lb	25.58	14.00	11.56	14.00	11.58	12.73	8.49
	mt	11,603	6,351	5,252	6,351	5,252	5,774	3,850
2013	million lb	22.34	12.11	10.23	12.11	10.23	11.44	7.63
	mt	10,133	5,491	4,624	5,491	4,624	5,189	3,459
2014	million lb	22.24	12.05	10.19	12.05	10.19	11.39	7.59
	mt	10,088	5,467	4,621	5,467	4,621	5,166	3,444

Note: Commercial Quotas and RHLs include the 3-percent RSA reduction

The Council and Board considered the SSC and Summer Flounder Monitoring Committee recommendations before concurring with the catch recommendations specified in Table 2. Fishing under these catch limits for 2013 and 2014 is not expected to compromise the summer flounder stock, nor will fishing at this level present a high likelihood of overfishing the stock. The Council recommended all other management measures by remain status quo.

Tables 3 and 4 present the proposed allocations for 2013 and 2014, respectively, 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 these specifications.

Table 3. 2013 Proposed 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	5,609	2,544	5,441	2,468
NH	0.00046	54	25	53	24
MA	6.82046	804,377	364,859	780,246	353,914
RI	15.68298	1,849,587	838,959	1,794,100	813,790
CT	2.25708	266,191	120,742	258,205	117,120
NY	7.64699	901,855	409,075	874,799	396,802
NJ	16.72499	1,972,478	894,701	1,913,303	867,860
DE	0.01779	2,098	952	2,035	923
MD	2.03910	240,483	109,081	233,269	105,809
VA	21.31676	2,514,012	1,140,337	2,438,592	1,106,127
NC	27.44584	3,236,851	1,468,211	3,139,746	1,424,165
Total <sup>3</sup>	100.00001	11,793,596	5,350,000	11,439,788	5,189,000

1 Preliminary Research Set-Aside amount is 589,880 lb (267.6 mt).

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

3 Rounding of quotas results in totals exceeding 100 percent.

Table 4. 2014 Proposed 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	5,579	2,533	5,417	2,457
NH	0.00046	54	24	52	24
MA	6.82046	800,091	363,242	776,788	352,345
RI	15.68298	1,839,732	835,240	1,786,147	810,183
CT	2.25708	264,772	120,207	257,061	116,601
NY	7.64699	897,050	407,261	870,922	395,044
NJ	16.72499	1,961,967	890,735	1,904,823	864,013
DE	0.01779	2,087	947	2,026	919
MD	2.03910	239,202	108,598	232,235	105,340
VA	21.31676	2,500,616	1,135,282	2,427,783	1,101,224
NC	27.44584	3,219,604	1,461,703	3,125,829	1,417,852
Total <sup>3</sup>	100.00001	11,730,754	5,326,000	11,389,082	5,166,000

1 Preliminary Research Set-Aside amount is 587,100 lb (266 mt).

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

3 Rounding of quotas results in totals exceeding 100 percent.

## Scup

The OFL for scup is 47.80 million lb (21,680 mt). Using the appropriate control rule and applying the Council's risk policy, the SSC recommended an ABC for scup of 38.71 million lb (17,557 mt) for 2013. The SSC also recommended a constant fishing mortality strategy for scup,

using a rate of 0.142, which results in a 2014 ABC of 35.99 million lb (16,325 mt). Similar to summer flounder, the stock assessment update upon which the specifications are based indicates that scup biomass is currently lower than in recent years. Therefore, the proposed catch limits are lower than 2012, but are still relatively high compared to recent landings.

The scup management measures specify that the ABC is equal to the sum of the commercial and recreational sector ACLs. The Scup Monitoring Committee met to discuss the SSC's recommendations and to determine if additional reductions in the catch limits were necessary to account for management uncertainty. Because both the recreational and commercial fisheries have not reached their respective landings limits because of the very high quotas, and the landings monitoring and fishery closure system is timely, the Monitoring Committee determined that no additional reductions to account for management uncertainty were necessary. Therefore, it was recommended that the ACTs (both commercial and recreational) should be set equal to the respective ACL for 2013-2014. Therefore, commercial sector ACL/ACT would be 30.19 million lb (13,694 mt) for 2013 and 28.07 million lb (12,734 mt) for 2014. The recreational sector ACLs/ACTs would be 8.52 million lb (3,863 mt), and 7.92 million lb (3,592 mt) for 2013 and 2014, respectively.

The Council recommended up to 3 percent of the landings for RSA. After RSA is removed, the commercial quotas would be 23.53 million lb (10,671 mt) for 2013 and 21.95 million lb (9,955 mt) for 2014. The recreational harvest limits would be 7.55 million lb (3,425 mt) for 2013 and 7.03 million lb (3,188 mt) for 2014.

Table 5: Proposed Scup Specifications

Year		ABC	Commercial ACL	Recreational ACL	Comm. ACT	Rec. ACT	Comm. Quota	RHL
2012	million lb	40.88	31.89	8.99	31.89	8.99	27.91	8.45

	mt	18,543	14,464	4,079	14,464	4,079	12,659	3,831
2013	million lb	38.71	30.19	8.52	30.19	8.52	23.53	7.55
	mt	16,325	13,694	3,863	13,694	3,863	10,671	3,425
2014	million lb	35.99	28.07	7.92	28.07	7.92	21.95	7.03
	mt	16,325	12,734	3,592	12,734	3,592	9,955	3,188

Note: Commercial Quotas and RHLs include the 3-percent RSA reduction

The scup commercial quota is divided into three commercial fishery quota periods.

There are no previous commercial overages applicable to the 2013 scup commercial quota. The period quotas, after deducting for RSA, are detailed in tables 6 and 7. Unused Winter I quota may be carried over for use in the Winter II period. The Council recommended all other management measures remain status quo.

Table 6. Proposed commercial scup quota allocations for 2013 by quota period

		Initial Quota		Initial Quota less Overages (through 10/31/2012)		Adjusted Quota less Overages and RSA		Federal Possession Limits (Per Trip)	
Quota Period	Percent Share	lb	mt	lb	mt	lb	mt	lb	kg
Winter I	45.11	10,940,583	4,963	N/A	N/A	10,612,366	4,814	50,000	22,680
Summer	38.95	9,446,591	4,285	N/A	N/A	9,163,193	4,156	N/A	N/A
Winter II	15.94	3,865,948	1,754	N/A	N/A	3,749,969	1,701	2,000	907
Total	100.0	24,253,122	11,001	N/A	N/A	23,525,528	10,671	N/A	N/A

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

Metric tons are as converted from pounds and may not necessarily total due to rounding.

N/A=Not applicable.

Table 7. Proposed commercial scup quota allocations for 2014 by quota period

		Initial Quota		Initial Quota less Overages (through 10/31/2012)		Adjusted Quota less Overages and RSA		Federal Possession Limits (Per Trip)	
Quota Period	Percent Share	lb	mt	lb	mt	lb	mt	lb	kg
Winter I	45.11	10,206,495	4,630	N/A	N/A	9,900,300	4,491	50,000	22,680
Summer	38.95	8,812,746	3,997	N/A	N/A	8,548,364	3,877	N/A	N/A
Winter II	15.94	3,606,551	1,636	N/A	N/A	3,498,355	1,587	2,000	907
Total	100.0	22,625,792	10,263	N/A	N/A	21,947,018	9,955	N/A	N/A

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

Metric tons are as converted from pounds and may not necessarily add due to rounding.

N/A=Not applicable.

## Black Sea Bass

The updated stock assessment indicates that black sea bass were not overfished and overfishing did not occur in 2011. Black sea bass remains a data-poor stock, with relatively high uncertainty for the purposes of calculating ABC. The SSC rejected the OFL estimate provided from the stock assessment, stating that it was highly uncertain and not sufficiently reliable to use as the basis of management advice. The ABC recommendation is the status quo ABC of 4.50 million lb (2,041 mt). The SSC recommended a 3-year specification period, with a constant harvest strategy that would implement the same ABC for 2013-2015. However, the Council only endorsed the ABC for 2013, and recommended the ACL, ACT, and quotas for 2013 only. The Council was concerned with the SSC's determination that black sea bass was a "Level 4" fishery under the Council's ABC control rule, despite some data improvements that may have led to a "Level 3" determination that could result in higher catch limits. The SSC debated the categorization of black sea bass extensively at its July meeting, but in the end determined that continuing the Level 4 designation was appropriate. The Council decided to recommend specifications for just 2013 in the hope that additional information will be available for the SSC in the coming year.

The Black Sea Bass Monitoring Committee met to discuss the SSC's recommendations and to determine if additional reductions in the catch limits were necessary to account for management uncertainty. The Monitoring Committee determined that no additional reductions to account for management uncertainty were necessary because the constant catch strategy

adequately addresses uncertainty. Therefore, it was recommended that the ACTs (both commercial and recreational) should be set equal to their respective ACL for 2013.

The Council and Board considered the SSC and Black Sea Bass Monitoring Committee recommendations at their August meeting. The Council recommends a commercial ACL and ACT of 2.13 million lb (966 mt), a recreational ACL and ACT of 2.37 million lb (1,075 mt), a commercial quota of 1.78 million lb (805 mt), and an RHL of 1.85 million lb (838 mt). The quotas include a reduction of 3 percent, as recommended by the Council, for RSA. While the ABC is the same as last year, the ACL/ACTs and quotas are different from 2012 because the updated discard estimate is higher than the previous year.

Recent data indicate that the 2012 recreational black sea bass ACL has been exceeded, and may be further exceeded, by a significant amount. The regulations require that we deduct the amount of landings that exceeded the RHL from a single subsequent year's ACT. Therefore, the proposed ACT and RHL may be adjusted in the final rule to account for this overage.

Table 8. Proposed Black Sea Bass 2013 Specifications

Year		ABC	Commercial ACL	Recreational ACL	Comm. ACT	Rec. ACT	Comm. Quota	RHL
2012	million lb	4.50	1.98	2.52	1.98	1.86	1.71	1.32
	mt	2,041	898	1,143	898	844	774	598
2013	million lb	4.50	2.13	2.37	2.13	2.37	1.78	1.85
	mt	2,041	966	1,075	966	1075	805	838

#### 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 2013-2014 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. *See* 13 C.F.R. § 121.201. 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 2013-2014 specifications could affect 2,039 vessels that held a Federal summer flounder, scup, and/or black sea bass permit in 2011 (the most recent year of complete permit data). However, the more immediate impact of this rule will

likely be realized by the approximately 870 vessels that actively participated in these fisheries (i.e., landed these species) in 2011. Estimates of costs associated with this rule are discussed further below.

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 2013 specifications, several indefinite measures would remain in effect until otherwise changed; however, many components of the 2012 specifications expire on December 31, 2012. These include catch limits for all three species. There are no roll-over provisions for the quotas if the 2013 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 2013 specifications, and it was excluded from detailed analysis in the Council's EA/RFA analyses.

The Council analyzed three sets of combined catch limit alternatives for the 2013-2014 summer flounder, scup, and black sea bass fisheries. Of these, one alternative, labeled Alternative 3 for each species, contained the most restrictive options (i.e., lowest total landing levels). While the Alternative 3 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 3 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 sustaining the summer flounder, scup, and black sea bass stocks, consistent with the FMP and Magnuson-Stevens Act.

Alternative 1 (Council's preferred) would implement the following ABCs in 2013: Summer flounder, 22.34 million lb (10,133 mt); scup, 38.71 million lb (17,577 mt); and black sea bass, 4.5 million lb (2,041 mt). Alternative 1 would also implement the following ABCs for 2014: Summer flounder, 22.40 million lb (10,088 mt), and scup, 35.99 million lb (16,325 mt). Alternative 2 (status quo) would implement the following ABCs in 2013 and 2014: Summer flounder, 25.58 million lb (11,603 mt); scup, 40.88 million lb (18,543 mt); and black sea bass (2013 only), 4.5 million lb (2,041 mt).

#### Commercial Fishery Impacts

As a result of the proposed decrease in commercial and recreational landings from 2012 levels, it is expected that small negative economic impacts on the summer flounder fisheries in 2013 and 2014 may occur. Each state's summer flounder allocation commercial limits will decrease under these adjusted commercial quotas. The proposed scup commercial quota and recreational harvest limits under the proposed alternative are lower than the quotas implemented in 2012; however, they are substantially higher than the 2011 commercial and recreational landings. In 2011, the commercial quota and recreational harvest limit each increased by 91 percent when compared to the limits implemented in 2010. The high 2011 commercial quota and recreational harvest limit values did not constrain the fishery in 2011 as had occurred in previous years when the commercial quota and recreational harvest limits were considerably lower. In fact, the scup fishery did not harvest its full 2011 allocation. Unless market conditions

change substantially in 2013, it would be expected that commercial and recreational landings will likely be close to the 2011 landings. There is no indication that the market environment for commercially and recreationally caught scup will change considerably in years 2013 or 2014. Therefore, there are no expected negative impacts from the proposed scup quotas, even though they are lower than the previous year. As a result of the potential increase in landings under the black sea bass commercial quota and recreational harvest limits under preferred alternative 1, it is expected that a small positive economic impacts are likely to occur when compared to 2012.

#### Recreational Fishery Impacts

While the specifications proposed would establish a 2013 and 2014 recreational harvest limit for summer flounder, scup, and black sea bass, the management measure details for recreational fisheries will be developed by the Council in December 2012, followed by NMFS rulemaking in the first quarter of 2013. 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. If recreational landings for these three species are the same in 2012 as in 2011 (5.96 million lb for summer flounder, 3.66 million lb for scup, and 1.27 million for black sea bass), the recreational harvest limits proposed for 2013 (7.62 million lb for summer flounder, 7.56 million for scup, and 1.84 million for black sea bass) and 2014 (6.12 million lb for summer flounder and 3.01 million for scup) are not expected to constrain recreational landings in 2013, but may constrain summer flounder recreational landings in 2014. As such, it is unlikely that more restrictive limits (i.e., lower possession limits, higher minimum size limits, and/or shorter open seasons) will be required in 2013 when compared to 2012, but more restrictive recreational harvest measures may be necessary in 2014 for summer flounder.

Specific recreational management measures (for all three species) will be determined in December when more complete data regarding 2012 recreational landings are available.

#### Summary

The Council selected Alternative 1 (preferred) over Alternative 2 (status quo) and Alternative 3 (most restrictive) stating that, while each alternative would provide adequate stock protection, the Alternative 1 measures were expected to result in the least amount of long-term negative economic impact to the summer flounder, scup, and black sea bass fisheries, and were consistent 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 catch limits in Alternative 1. As such, NMFS is proposing to implement the Council's preferred ABCs, ACLs, ACTs, Commercial Quotas, and Recreational Harvest Limits for 2013 and 2014:

Table 9: Summary of 2013 and 2014 Catch Limits

	Summer Flounder		Scup		Black Sea Bass
	2013	2014	2013	2014	2013
ABC (mt)	10,133	10,088	17,557	16,325	2,041
ABC (lb)	22,339,440	22,240,230	38,706,560	35,990,460	4,499,635
Commercial ACL (mt)	5,491	5,467	13,694	12,734	965.6
Commercial ACL (lb)	12,105,580	12,052,670	30,190,100	28,073,660	2,108,942
Recreational ACL (mt)	4,642	4,621	3,863	3,592	1,075.4
Recreational ACL (lb)	10,233,860	10,187,560	8,516,457	7,919,004	2,370,851
Commercial ACT (mt)	5,491	5,467	13,694	12,734	965.6
Commercial ACT (lb)	12,105,580	12,052,670	30,190,100	28,073,660	2,108,942
Recreational ACT (mt)	4,642	4,621	3,863	3,592	1,075.4
Recreational ACT (lb)	10,233,860	10,187,560	8,516,457	7,919,004	2,370,851
Commercial Quota (mt)	5,350	5,326	11,001	10,263	830
Commercial Quota (lb)	11,793,595	11,730,754	24,253,122	22,625,792	1,829,837
RHL (mt)	3,656	3,551	3,531	3,287	864
RHL (lb)	7,861,639	7,827,547	7,784,363	7,245,708	1,904,794
Commercial Quota (mt) less RSA	5,189	5,166	10,671	9,955	805.2
Commercial Quota (lb) less RSA	11,439,790	11,389,080	23,525,530	21,947,020	1,775,162
RHL (mt) less RSA	3,459	3,444	3,425	3,188	838
RHL (lb) less RSA	7,625,790	7,592,720	7,550,832	7,028,337	1,847,474

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

Dated: November 13, 2012

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Alan D. Risenhoover,  
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 performing the functions and duties of the  
 Deputy Assistant Administrator for Regulatory Programs,  
 National Marine Fisheries Service.

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