

required in an export bill of lading (§ 252.250); or

(4) A copy of the through bill of lading, signed by the carrier or its agent, where exportation is to a contiguous foreign country (§ 252.250); or

(5) A certificate from the export carrier or its agent, showing actual exportation, when a bill of lading is required and not obtainable, executed under the penalties of perjury, as provided for in § 252.253. It must contain the same information required in an export bill of lading (§ 252.250); or

(6) U.S. Customs certification on TTB F 5100.11, or a certificate of receipt as provided for in § 252.254; or

(7) A certificate of receipt issued by an official of the country or possession where the shipment of distilled spirits has actually landed, as provided for in § 252.255.

(b) *Time period for filing evidence.* You must submit the evidence of exportation of any shipment of distilled spirits to the appropriate TTB officer within 90 days of the date of withdrawal and removal of the distilled spirits from the premises of the distilled spirits plant covered by the bond of the proprietor. The appropriate TTB officer may grant an extension in cases where just cause is shown.

3. The heading of § 252.40 is revised to read as set forth below:

**§ 252.40 Filing of evidence of exportation for wine.**

\* \* \* \* \*

4. Section 252.44 is added to read as follows:

**§ 252.44 Alternative documentation.**

We may approve alternative types of documentation, upon letterhead request, provided such documentation is complete and accurate, third party verifiable, and contains the same information required in an export bill of lading (§ 252.250). You must follow the procedures in § 252.20 if you wish to request approval for use of alternative types of documentation.

**Subpart M—Shipment or Delivery for Export**

5. Section 252.254 is added as follows:

**§ 252.254 Certification on withdrawal of spirits, specially denatured spirits, or wines for exportation, TTB F 5100.11.**

To use TTB F 5100.11 as proof of export you must obtain certification by U.S. Customs Service in Part VII, Certificate of Clearance or Use, of the form. A signed certificate of receipt from U.S. Customs Service is also acceptable, if it contains the same information

required in an export bill of lading (§ 252.250).

6. Section 252.255 is added as follows:

**§ 252.255 Certificate by foreign official.**

TTB will accept an appropriate certification from a foreign official as proof of export. If you use this proof, you must provide a signed certificate of receipt by an authorized official of a foreign country or possession verifying actual exportation. The certificate must contain sufficient information to identify the shipment and the TTB F 5100.11 covering the shipment.

Signed: August 8, 2003.

**Arthur J. Libertucci,**  
*Administrator.*

Approved: August 8, 2003.

**Timothy E. Skud,**  
*Deputy Assistant Secretary, Regulatory, Tariff & Trade Enforcement.*

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**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

[Docket No. 030912231-3231-01; I.D. 090403A]

**RIN 0648-AR43**

**50 CFR Part 648**

**Fisheries of the Northeastern United States; Summer Flounder, Scup, and Black Sea Bass Fisheries; Framework Adjustment 3**

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

**ACTION:** Proposed rule; request for comments.

**SUMMARY:** NMFS proposes measures contained in Framework Adjustment 3 (Framework 3) to the Summer Flounder, Scup, and Black Sea Bass Fishery Management Plan (FMP) that would allow the rollover of unused commercial scup quota from the Winter I period to the Winter II period, and to change the regulations regarding the scup commercial quota counting procedures. **DATES:** Comments on this proposed rule must be received on or before October 9, 2003.

**ADDRESSES:** Copies of the Framework 3 document, its Regulatory Impact Review (RIR), the Initial Regulatory Flexibility Analysis (IRFA), the Environmental Assessment, and other supporting

documents for the framework adjustment are available from Daniel Furlong, Executive Director, Mid-Atlantic Fishery Management Council, Room 2115, Federal Building, 300 South Street, Dover, DE 19901-6790. The EA/RIR/IRFA 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 on Framework 3." Comments may also be sent via facsimile (fax) to (978) 281-9135. Comments will not be accepted if submitted via e-mail or the Internet.

**FOR FURTHER INFORMATION CONTACT:** Sarah McLaughlin, Fishery Policy Analyst, (978) 281-9279, fax (978) 281-9135, e-mail [sarah.mclaughlin@noaa.gov](mailto:sarah.mclaughlin@noaa.gov).

**SUPPLEMENTARY INFORMATION:**

**Background**

The summer flounder, scup, and black sea bass fisheries are managed cooperatively by the Atlantic States Marine Fisheries Commission (Commission) and the Mid-Atlantic Fishery Management Council (Council), in consultation with the New England and South Atlantic Fishery Management Councils. The management unit for scup (*Stenotomus chrysops*), specified in the FMP, is defined as 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 FMP and its implementing regulations found at 50 CFR part 648, subparts A, G (summer flounder), H (scup), and I (black sea bass), describe the process for specifying annual commercial scup measures that apply in the Exclusive Economic Zone (EEZ). The states manage these fisheries within 3 miles of their coast, under the Commission's Interstate Summer Flounder, Scup, and Black Sea Bass FMP. The Federal regulations govern vessels fishing in the EEZ, as well as vessels possessing a Federal fisheries permit, regardless of where they fish.

Scup was most recently assessed at the 35<sup>th</sup> Northeast Regional Stock Assessment Review Committee (SARC 35) in June 2002. SARC 35 concluded that scup are no longer overfished, but stock status with respect to overfishing cannot currently be evaluated. SARC 35 indicated that relative exploitation rates on scup have declined in recent years, although the absolute value of the fishing mortality rate cannot be determined because of a lack of reliable

discard estimates and information regarding the length composition of scup landings and discards. Overall, most recent scup survey observations indicate strong recruitment and some rebuilding of age structure.

The Council has initiated this framework adjustment, pursuant to 50 CFR 648.127(a), to allow the commercial scup fishery to be more efficient and to better achieve the management objectives of the FMP, specifically regarding attainment of optimum yield from the scup fishery. The Council intends to continue the management programs detailed in the FMP and reduce overfishing and rebuild the scup stock.

The commercial scup fishery is managed under a system that allocates the annual quota to three periods: Winter I, January-April (45.11 percent); Summer, May-October (38.95 percent); and Winter II, November-December (15.94 percent). During the Winter periods, the quota is monitored on a coastwide basis. During the Summer period, the quota is also monitored on a coastwide basis, but the Commission uses a state-by-state allocation system to help manage the Federal quota. The Federal commercial scup fishery is closed coastwide when the allocation for a period is reached. In addition, any overages during a quota period are subtracted from that period's allocation for the following year. Any quota overages by a state during the Summer period (whether or not the total Summer period quota is exceeded) are subtracted by the Commission from the state's Summer period share the following year. The current regulations do not allow for the transfer of quota between periods within a fishing year. The final rule to implement the 2003 annual quota specifications (68 FR 60, January 2, 2003) established possession limits of 15,000 lb (6,804 kg) per trip during Winter I and 1,500 lb (680 kg) during Winter II, and specified that the Winter I possession limit be reduced to 1,000 lb (454 kg) per trip when 80 percent of the commercial quota allocated to that period is projected to be harvested.

#### **Quota Rollover From Winter I to Winter II**

Framework 3 proposes 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 added to the quota for the Winter II period. During the development of this framework adjustment, the Council considered and analyzed three alternatives for unused Winter I quota: Taking no action, which would continue the current regulations

without the ability to transfer unused quota between periods (Alternative 1); the proposed option (Alternative 2); and combining the Winter I and Winter II quotas into a single quota spanning the two periods (Alternative 3). A fourth option, to roll over unused quota from both the Winter I and Summer periods into Winter II, was considered but rejected for further analysis due to the impracticability of monitoring the Summer period quota through the end of the Summer period, calculating the amount of unused combined Winter I and Summer period quota, if any, and effecting the quota rollover prior to the beginning of the Winter II period. The proposed option was selected by the Council because, under Alternative 1, regulatory discarding in Winter II would continue to occur, and Alternative 3 introduces the risk that the entire combined winter quota could be taken during Winter I, resulting in no fishery during Winter II. Additionally, it may be difficult to develop possession limits that would accommodate the merged periods under Alternative 3. Alternative 2 is not associated with any risk to the scup stock or stocks of other species, and should provide economic and social benefits while meeting the objectives of National Standard 1.

In addition, commercial possession limits for the Winter II period would be adjusted, based on the amount of quota rolled over from the Winter I period. It is the Council's intention that the quota rollover and any necessary possession limit adjustments would be accomplished via a notification of changes prior to the beginning of the Winter II fishery.

For 2003, the Winter II quota is 1,979,689 lb (897,981 kg), and preliminary Winter I landings information indicates that 2,203,751 lb (999,605 kg) remain of the Winter I quota. Framework 3 proposes that the entire amount of unused 2003 Winter I quota be transferred to Winter II; assuming the transfer of 2,203,751 lb (999,605 kg), the total Winter II quota would be 4,183,440 lb (1,897,576 kg). The amount to be transferred will be updated in the final rule based on the latest landings information for the 2003 Winter I period. In addition to the quota transfer, Framework 3 proposes to increase the 2003 Winter II possession limit to 4,000 lb (1,814 kg) per trip. For 2004 and future years, the Council will recommend Winter II possession limits, adjusted as appropriate based on the amount rolled over from Winter I to Winter II, as part of the annual commercial quota specification process.

#### **Quota Counting Procedures**

The distribution of scup is such that they are occasionally available in nearshore (state) waters prior to the beginning of the Summer period (May 1). The Commission has informed the Council and NMFS that an addendum to the Interstate FMP will be prepared, in the event of a Federal Winter I closure prior to April 15, to allow scup landed April 15 through April 30 to be counted against the states' Summer period quota allocation. State permit holders would be allowed to land and sell scup to state and federally permitted dealers after April 15 and prior to the Federal opening of the Summer period on May 1, in order to reduce discards. In order to effect the planned change to the Commission allocation system, Framework 3 proposes a mechanism, for years when the Winter I commercial scup quota is completely harvested and the Winter I fishery is closed prior to April 15, and upon a state's written request, to allow for commercial landings of scup by state-only permitted vessels in said state that occur from April 15 through April 30 to be counted against the Summer period quota allocation.

During the development of this framework adjustment, the Council considered and analyzed two options for the quota counting procedures: A no-action alternative, which would not allow these landings to be counted against the Summer period quota, but would continue to require that they be recorded as an overage to the Winter I period quota; and the proposed option. The Council selected the proposed action because it would not alter the current quota period or allocations, would require only a minimal change to current Federal regulations, would reduce the negative effects associated with harvest demand when scup availability is high but landings are not allowed, and would not place the scup stock or stocks of other species at risk.

#### **Classification**

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

The Council prepared an IRFA that describes the economic impact this proposed rule, if adopted, would have on small entities. A description of the reasons why this action is being considered, and the objectives of and legal basis for this action are contained at the beginning of this section in the preamble. The preamble to this proposed rule also includes complete descriptions of the proposed, no action, and other alternatives discussed here.

There are no new recordkeeping or reporting requirements proposed in this rule. There are no relevant Federal rules that duplicate, overlap, or conflict with this proposed rule. 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. A summary of the analysis follows:

The purpose of this framework is to better coordinate the timing of the fishery's harvest potential with availability of the resource. Under the no-action quota rollover alternative, the current allocation system as specified in the FMP would remain unchanged, and any negative economic impacts associated with it could persist. More specifically, a portion of the annual quota allocated to Winter I may be left unharvested, which would result in foregone economic opportunities to the fishing industry. Additionally, the existing regulations require that once the Winter II quota has been achieved, additional scup captured by the fishery operating during that time of year be discarded.

Allowing the transfer of unused scup quota from the Winter I period to the Winter II period could potentially increase landings of scup during the Winter II period. Applying the nominal average ex-vessel price of scup for the 1998–2002 Winter II period of \$0.80/lb, and assuming the transfer of 2,203,751 lb (999,605 kg), the additional amount of scup available for harvest during the 2003 Winter II period would be valued at \$1.763 million. If this increase in revenue is equally distributed among the 213 vessels that landed scup during the 2002 Winter II period, then overall ex-vessel gross revenues could increase by \$8,277 per vessel. However, as it is possible that the average price for scup during Winter II may decrease, given the potential increase in scup landings, the estimate of the increase to ex-vessel gross revenues most likely represents an upper limit.

The proposed Winter II possession limit for 2003 of 4,000 lb (1,814 kg) per trip is not expected to impact the scup fishery negatively. In fact, the increased possession limit may have positive impacts by providing the market a regular product supply, and avoiding market gluts and price fluctuations.

It is expected that the proposed action regarding quota rollover from Winter I to Winter II would reduce social burdens associated with early closures that may occur under the current system for managing scup. It is expected that this alternative would have a positive impact on the ports and communities

associated with the vessels participating in this fishery.

The impacts of the combination of Winter I and Winter II into one period are expected to be similar to those for the proposed action. However, it is possible that the entire quota could be harvested during Winter I. If this were to occur, fishermen would not be able to fish for scup during the Winter II period, potentially disrupting product supply, increasing discards, and contributing to price fluctuations, as well as severely constraining fishing opportunities for those fishermen that depend upon access to the Winter II quota period fishery. The proposed action would provide the maximum economic benefit to the fishing industry by ensuring that any unused Winter I period scup quota would be made available in the Winter II period.

Federal Northeast permit data indicate that there were 878 vessels with scup commercial permits in 2001. This action would affect only how certain landings are attributed, and would not affect the ability of vessels holding only a state permit to land and sell scup during a Federal closure.

The preferred quota counting procedures alternative would not affect overall scup landings, as total landings would continue to be restricted to the annual commercial quota. It is possible that, if the Winter I fishery were closed and inshore fishermen were allowed to land and sell scup, scup prices could increase. However, given the short length of time that inshore fishermen would have to land any scup harvested during a Winter I closure, i.e., April 15 through April 30, it is not expected that the scup price would be significantly affected. Nevertheless, selling scup harvested by inshore fisheries prior to May 1 during a Winter I closure would likely provide economic and social benefits to inshore fisheries. It is possible that the preferred alternative could result in the Summer period quota being harvested earlier. This would depend on the amount of the summer quota, numbers of fishermen that may participate in an early summer fishery, and/or the amount of scup that could potentially be landed after April 15 and prior to May 1 in the event of a Winter I closure. However, due to lack of information on these factors, this cannot be analyzed in detail.

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

Fishing, Fisheries, Reporting and recordkeeping requirements.

Dated: September 17, 2003.

**Rebecca Lent,**

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

For the reasons stated 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 § 648.120, paragraphs (b)(2), (b)(4), and (c) are revised; paragraph (d)(3) is redesignated as paragraph (d)(4) and the introductory text is revised; and new paragraphs (d)(3) and (d)(5) are added to read as follows:

#### § 648.120 Catch quotas and other restrictions.

\* \* \* \* \*

(b) \* \* \*

(2) Landing limits for the Winter I and Winter II periods, including landing limits that result from potential rollover of quota from Winter I to Winter II. The possession limit is the maximum quantity of scup that is allowed to be landed within a 24-hour period (calendar day).

\* \* \* \* \*

(4) All scup landed for sale in any state during a quota period shall be applied against the coastwide commercial quota for that period, regardless of where the scup were harvested, except as provided in paragraph (d)(5) of this section.

\* \* \* \* \*

(c) *Annual fishing measures.* The Demersal Species Committee shall review the recommendations of the Scup Monitoring Committee. Based on these recommendations and any public comment, the Demersal Species Committee shall recommend to the MAFMC measures necessary to assure that the specified exploitation rate will not be exceeded. The MAFMC's recommendation must include supporting documentation, as appropriate, concerning the environmental and economic impacts of the recommendations. The Regional Administrator shall review these recommendations and any recommendations of the Commission. After such review, NMFS will publish a proposed rule to implement a commercial quota in the **Federal Register**, specifying the amount of quota allocated to each of the three periods, landings limits for the Winter I and Winter II periods, including landing

limits that result from potential rollover of quota from Winter I to Winter II, the percentage of landings attained during the Winter I fishery at which the landing limits will be reduced, a recreational harvest limit, and additional management measures for the commercial fishery. If the Regional Administrator determines that additional recreational measures are necessary to assure that the specified exploitation rate will not be exceeded, he or she will publish a proposed rule in the **Federal Register** to implement additional management measures for the recreational fishery. After considering public comment, the Regional Administrator will publish a final rule in the **Federal Register** to implement annual measures.

(d) \* \* \*

(3) The Regional Administrator will monitor the harvest of commercial quota for each quota period based on dealer reports, state data, and other available information and shall determine the total amount of scup landed during the Winter I period. If, in any year that the Regional Administrator determines that the landings of scup during Winter I are

less than the Winter I quota for that year, he/she shall increase, through publication of a notification in the **Federal Register**, provided such rule complies with the requirements of the Administrative Procedure Act, the Winter II quota for that year by an amount not to exceed the amount of the Winter I underharvest. The Regional Administrator shall also adjust, through publication of a notification in the **Federal Register**, the Winter II landing limits consistent with the amount of the quota increase, based on the landing limits established through the annual specifications-setting process.

(4) All scup landed for sale in any state during a quota period shall be applied against the coastwide commercial quota for that period, regardless of where the scup were harvested, except as provided in paragraph (d)(5) of this section. Any current year landings in excess of the commercial quota in any quota period will be deducted from that quota period's annual quota in the following year as prescribed below:

\* \* \* \* \*

(5) If authorized by the Regional Administrator, and in a year in which the Winter I fishery has been closed prior to April 15, scup landed for sale from April 15 through April 30 by vessels issued a state permit only and fishing exclusively within the waters of a state may be counted against the Summer period quota. Requests to the Regional Administrator to count scup landings in a state from April 15 through April 30 against the Summer period quota must be made by letter signed by the principal state official with marine fishery management responsibility and expertise, or his/her designee, and must be received by the Regional Administrator no later than April 15. Within 10 working days following receipt of the letter, the Regional Administrator shall notify the appropriate state official of the disposition of the request.

\* \* \* \* \*

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