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**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

**50 CFR Part 648**

**[Docket No. 150903814-5999-02]**

**RIN 0648-XE171**

**Fisheries of the Northeastern United States; Summer Flounder, Scup, and Black Sea Bass Fisheries; 2016-2018 Summer Flounder, Scup, and Black Sea Bass Specifications**

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

**ACTION:** Final rule.

**SUMMARY:** NMFS issues final specifications for the 2016-2018 summer flounder and scup fisheries, and the 2016 and 2017 black sea bass fishery. This final rule specifies allowed harvest limits for both commercial and recreational fisheries. This action prohibits federally permitted commercial fishing vessels from landing summer flounder in Delaware in 2016 due to continued quota repayment from previous years' overages. This action also reduces the 2016 black sea bass commercial quota to account for a catch overage in 2014. These actions are necessary to comply with regulations implementing the Summer Flounder, Scup, and Black Sea Bass Fishery Management Plan, and to ensure compliance with the Magnuson-Stevens Fishery Conservation and Management Act. The intent of this action is to establish harvest levels and other management measures to ensure that these species are not overfished or subject to overfishing in 2016-2018.

**DATES:** Effective January 1, 2016, through December 31, 2018.

**ADDRESSES:** Copies of the specifications document, consisting of an Environmental Assessment (EA), Initial Regulatory Flexibility Analysis (IRFA), and other supporting documents used by the Summer Flounder, Scup, and Black Sea Bass Monitoring Committees and Scientific and Statistical Committee (SSC), are available from Dr. Christopher Moore, Executive Director, Mid-Atlantic Fishery Management Council, Suite 201, 800 North State Street, Dover, DE 19901. The specifications document is also accessible via the Internet at <http://www.greateratlantic.fisheries.noaa.gov>. The Final Regulatory Flexibility Analysis (FRFA) consists of the IRFA, public comments and responses contained in this final rule, and the summary of impacts and alternatives contained in this final rule. Copies of the small entity compliance guide are available from John K. Bullard, Regional Administrator, Greater Atlantic Region, National Marine Fisheries Service, 55 Great Republic Drive, Gloucester, MA 01930-2298.

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

**SUPPLEMENTARY INFORMATION:**

**Background**

The Mid-Atlantic Fishery Management Council and the Atlantic States Marine Fisheries Commission cooperatively manage the summer flounder, scup, and black sea bass fisheries under the Summer Flounder, Scup, and Black Sea Bass Fishery Management Plan (FMP). Fishery specifications in these fisheries include various catch and landing subdivisions, such as the species-specific acceptable biological catch (ABC), commercial and recreational sector annual catch limits (ACLs), annual catch targets (ACTs), and the sector-specific landing limits (i.e., the commercial fishery quota and recreational harvest limit) established for the up to three

fishing years at a time. The FMP and its implementing regulations establish the Council’s process for establishing specifications. 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, 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. Detailed background information regarding the status of the summer flounder, scup, and black sea bass stocks and the development of the 2016-2018 specifications for these fisheries was provided in the proposed specifications (November 9, 2015; 80 FR 69179) and is not repeated here.

NMFS will establish the 2016 recreational management measures (i.e., minimum fish size, possession limits, and fishing seasons) for summer flounder, scup, and black sea bass by publishing proposed and final rules in the **Federal Register** at a later date.

**2016-2018 Specifications**

This action establishes the following specifications:

**Table 1. Summary of the 2016-2018 Summer Flounder and Scup Specifications and 2016-2017 Black Sea Bass Specifications**

|                         |            | Summer Flounder |       |        | Scup   |        |        | Black Sea Bass |       |
|-------------------------|------------|-----------------|-------|--------|--------|--------|--------|----------------|-------|
|                         |            | 2016            | 2017  | 2018   | 2016   | 2017   | 2018   | 2016           | 2017  |
| Overfishing Limit (OFL) | million lb | 18.06           | 19.82 | 22.40  | 35.80  | 32.09  | 29.68  | n/a            | n/a   |
|                         | mt         | 8,194           | 8,991 | 10,159 | 16,238 | 14,556 | 13,464 | n/a            | n/a   |
| ABC                     | million lb | 16.26           | 15.86 | 15.68  | 31.11  | 28.40  | 27.05  | 6.67           | 6.67  |
|                         | mt         | 7,375           | 7,193 | 7,111  | 14,110 | 12,881 | 12,270 | 3,024          | 3,024 |
| Commercial              | million lb | 9.42            | 9.19  | 9.10   | 24.26  | 22.15  | 21.10  | 3.15           | 3.15  |

|                               |            |       |       |       |        |        |       |       |       |
|-------------------------------|------------|-------|-------|-------|--------|--------|-------|-------|-------|
| ACL/ACT                       | mt         | 4,275 | 4,168 | 4,127 | 11,006 | 10,047 | 9,571 | 1,428 | 1,428 |
| Recreational<br>ACL/ACT       | million lb | 6.83  | 6.67  | 6.56  | 6.84   | 6.25   | 5.95  | 3.52  | 3.52  |
|                               | mt         | 3,100 | 3,025 | 2,984 | 3,104  | 2,834  | 2,699 | 1,597 | 1,597 |
| Commercial<br>Quota           | million lb | 8.12  | 7.91  | 7.89  | 20.47  | 18.38  | 17.34 | 2.70  | 2.71  |
|                               | mt         | 3,685 | 3,590 | 3,581 | 9,284  | 8,337  | 7,866 | 1,226 | 1,230 |
| Recreational<br>Harvest Limit | million lb | 5.42  | 5.28  | 5.26  | 6.09   | 5.50   | 5.21  | 2.82  | 2.82  |
|                               | mt         | 2,457 | 2,393 | 2,387 | 2,763  | 2,495  | 2,361 | 1,280 | 1,280 |

The process describing the calculation of the commercial and recreational ACLs, commercial quotas, and recreational harvest limits was presented in the November 9, 2015, proposed rule, and is not repeated here. The specific discard values projected for each fishery and sector are described in more detail below.

*Summer Flounder*

This rule implements the Council’s ABC recommendation and the commercial and recreational catch limits associated with that ABC for fishing years 2016-2018.

As described in the proposed rule, these specifications are based on a deviation from the Council’s normal procedures. Had the standard Risk Policy been followed, the drastic reduction in available catch could have had substantial economic impacts. The 2016 and 2017 ABCs have a higher risk of overfishing than would be allowed under the Council’s Risk Policy, but the 2018 ABC has a lower risk of overfishing than the Risk Policy requires. Each of the ABCs established in this rule have a less than 50-percent probability of resulting in overfishing. Further, the projected biomass is the same under either the standard Risk Policy or the deviation from the Risk Policy used in these specifications. Because the OFLs are projected to increase modestly over the next three years, the specifications established in this rule are relatively stable. The SSC has requested a stock assessment update for next summer and intends to evaluate the available information to determine if the 2017 and 2018 ABCs remain appropriate. Fishing under these catch limits for 2016 through 2018 is not expected to compromise the summer flounder stock,

nor will fishing at this level present an unacceptably high likelihood of overfishing.

This action makes no other changes to the Federal commercial summer flounder management measures.

**Table 2. 2016-2018 Summer Flounder Specifications and Calculations**

|                                 | 2016       |       | 2017       |       | 2018       |        |
|---------------------------------|------------|-------|------------|-------|------------|--------|
|                                 | million lb | mt    | million lb | mt    | million lb | mt     |
| OFL                             | 18.06      | 8,194 | 19.82      | 8,991 | 22.4       | 10,159 |
| ABC                             | 16.26      | 7,375 | 15.86      | 7,193 | 15.7       | 7,111  |
| ABC Landings Portion            | 13.54      | 6,142 | 13.19      | 5,983 | 13.2       | 5,968  |
| ABC Discards Portion            | 2.72       | 1,233 | 2.67       | 1,210 | 2.52       | 1,143  |
| Commercial ACL                  | 9.43       | 4,275 | 9.19       | 4,168 | 9.1        | 4,127  |
| Commercial ACT                  | 9.43       | 4,275 | 9.19       | 4,168 | 9.1        | 4,127  |
| Projected Commercial Discards   | 1.30       | 590   | 1.28       | 579   | 1.21       | 547    |
| Commercial Quota                | 8.12       | 3,685 | 7.91       | 3,590 | 7.89       | 3,581  |
| Recreational ACL                | 6.84       | 3,100 | 6.67       | 3,025 | 6.58       | 2,984  |
| Recreational ACT                | 6.84       | 3,100 | 6.67       | 3,025 | 6.58       | 2,984  |
| Projected Recreational Discards | 1.42       | 643   | 1.39       | 631   | 1.32       | 596    |
| Recreational Harvest Limit      | 5.42       | 2,457 | 5.28       | 2,393 | 5.26       | 2,387  |

Table 3 presents the 2016 summer flounder allocations for each state. Consistent with the quota-setting procedures for the FMP, summer flounder overages are determined based upon landings for the period January-October 2015, plus any previously unaccounted for overages. Table 3 summarizes the commercial summer flounder percent shares as outlined in § 648.102 (c)(1)(i), the resultant 2016 commercial quotas, the quota overages as described above, and the final adjusted 2016 commercial quotas. The 2015 quota overage is determined by comparing landings for January through October 2015, plus any landings in 2014 in excess of the 2014 quota, that were not previously addressed in the 2015 specifications, for each state. For Delaware, this includes continued repayment of overharvest from previous years. Table 4 presents the initial 2017 and 2018 allocations by state. The 2017 and 2018 state quota

allocations are preliminary and are subject to change if there are overages of states' quotas carried over from a previous fishing year. Notice of any commercial quota adjustments to account for overages will be published in the **Federal Register** prior to the start of the respective fishing year.

**Table 3. Final State-by-State Commercial Summer Flounder Allocations for 2016**

| State          | FMP Percent Share | 2016 Initial Quota |           | Overages through October 31, 2015 |         | Adjusted 2016 Quota, less overages |           |
|----------------|-------------------|--------------------|-----------|-----------------------------------|---------|------------------------------------|-----------|
|                |                   | lb                 | kg        | lb                                | kg      | lb                                 | kg        |
| Maine          | 0.04756           | 3,864              | 1,753     | 0                                 | 0       | 3,864                              | 1,753     |
| New Hampshire  | 0.00046           | 37                 | 17        | 0                                 | 0       | 37                                 | 17        |
| Massachusetts  | 6.82046           | 554,097            | 251,334   | 0                                 | 0       | 554,097                            | 251,334   |
| Rhode Island   | 15.68298          | 1,274,091          | 577,917   | 0                                 | 0       | 1,274,091                          | 577,918   |
| Connecticut    | 2.25708           | 183,366            | 83,173    | 0                                 | 0       | 183,366                            | 83,173    |
| New York       | 7.64699           | 621,244            | 281,791   | 0                                 | 0       | 621,244                            | 281,792   |
| New Jersey     | 16.72499          | 1,358,744          | 616,315   | 0                                 | 0       | 1,358,744                          | 616,316   |
| Delaware       | 0.01779           | 1,445              | 656       | -48,846                           | -22,156 | -47,401                            | -21,501   |
| Maryland       | 2.0391            | 165,657            | 75,141    | 0                                 | 0       | 165,657                            | 75,141    |
| Virginia       | 21.31676          | 1,731,781          | 785,522   | 0                                 | 0       | 1,731,781                          | 785,523   |
| North Carolina | 27.44584          | 2,229,709          | 1,011,378 | 0                                 | 0       | 2,229,709                          | 1,011,379 |
| Total          | 100               | 8,124,035          | 3,684,997 | 0                                 | 0       | 8,122,590                          | 1,753     |

*Notes: Kilograms are as converted from pounds and may not necessarily add due to rounding. Total quota is the sum for all states with an allocation. A state with a negative number has a 2015 allocation of zero (0). Total adjusted 2016 quota, less overages, does not include negative allocations.*

**Table 4. 2016-2018 Proposed Initial Summer Flounder State Commercial Quotas**

| State          | FMP Percent Share | 2017 Quota |           | 2018 Quota |           |
|----------------|-------------------|------------|-----------|------------|-----------|
|                |                   | lb         | kg        | lb         | kg        |
| Maine          | 0.04756           | 3,764      | 1,707     | 3,755      | 1,703     |
| New Hampshire  | 0.00046           | 36         | 17        | 36         | 16        |
| Massachusetts  | 6.82046           | 539,812    | 244,854   | 538,459    | 244,240   |
| Rhode Island   | 15.68298          | 1,241,244  | 563,019   | 1,238,133  | 561,607   |
| Connecticut    | 2.25708           | 178,639    | 81,029    | 178,191    | 80,826    |
| New York       | 7.64699           | 605,228    | 274,527   | 603,711    | 273,838   |
| New Jersey     | 16.72499          | 1,323,715  | 600,427   | 1,320,397  | 598,921   |
| Delaware       | 0.01779           | 1,408      | 639       | 1,404      | 637       |
| Maryland       | 2.0391            | 161,387    | 73,204    | 160,982    | 73,020    |
| Virginia       | 21.31676          | 1,687,135  | 765,271   | 1,682,906  | 763,353   |
| North Carolina | 27.44584          | 2,172,227  | 985,305   | 2,166,781  | 982,835   |
| Total          | 100               | 7,914,596  | 3,589,997 | 7,894,754  | 3,580,997 |

*Delaware Summer Flounder Closure*

Table 3 shows that, for Delaware, the amount of overharvest from previous years is greater than the amount of commercial quota allocated to Delaware for 2016. As a result, there is no quota available for 2016 in Delaware. The regulations at § 648.4(b) provide that Federal permit holders, as a condition of their permit, must not land summer flounder in any state that the Administrator, Greater Atlantic Region, NMFS, has determined no longer has commercial quota available for harvest. Therefore, landings of summer flounder in Delaware by vessels holding commercial Federal summer flounder permits are prohibited for the 2016 calendar year, unless additional quota becomes available through a quota transfer and is announced in the **Federal Register**. Federally permitted dealers are advised that they may not purchase summer flounder from federally permitted vessels that land in Delaware for the 2016 calendar year, unless additional quota becomes available through a transfer, as mentioned above.

## Scup

This rule implements the Council’s ABC recommendation and the commercial and recreational catch limits associated with that ABC for fishing years 2016-2018. The scup management measures specify that the ABC is equal to the sum of the commercial and recreational sector ACLs. As described in the proposed rule, the ACLs and ACTs are set equal to each other for both sectors, sector-specific projected discards are removed, and the specifications for 2016-2018 are as shown in Table 5.

**Table 5. 2016-2018 Scup Specifications**

|                                 | 2016       |        | 2017       |        | 2018       |        |
|---------------------------------|------------|--------|------------|--------|------------|--------|
|                                 | million lb | mt     | million lb | mt     | million lb | mt     |
| OFL                             | 35.8       | 16,238 | 32.09      | 14,556 | 29.7       | 13,464 |
| ABC                             | 31.11      | 14,110 | 28.4       | 12,881 | 27.1       | 12,270 |
| ABC Landings Portion            | 26.56      | 12,047 | 23.88      | 10,832 | 22.6       | 10,227 |
| ABC Discards Portion            | 4.55       | 2,063  | 4.52       | 2,049  | 4.5        | 2,043  |
| Commercial ACL                  | 24.26      | 11,006 | 22.15      | 10,047 | 21.1       | 9,571  |
| Commercial ACT                  | 24.26      | 11,006 | 22.15      | 10,047 | 21.1       | 9,571  |
| Projected Commercial Discards   | 3.8        | 1,721  | 3.77       | 1,710  | 3.76       | 1,705  |
| Commercial Quota                | 20.47      | 9,284  | 18.38      | 8,337  | 17.3       | 7,866  |
| Recreational ACL                | 6.84       | 3,104  | 6.25       | 2,834  | 5.95       | 2,699  |
| Recreational ACT                | 6.84       | 3,104  | 6.25       | 2,834  | 5.95       | 2,699  |
| Projected Recreational Discards | 0.75       | 342    | 0.75       | 339    | 0.75       | 338    |
| Recreational Harvest Limit      | 6.09       | 2,763  | 5.5        | 2,495  | 5.21       | 2,361  |

If there is a commercial overage applicable to the scup commercial quota, notice will be published prior to the start of the each fishing year. No commercial quota overage is applicable to 2016; therefore, no adjustment to the 2016 quota is necessary.

The scup commercial quota is divided into three commercial fishery quota periods. The period quotas are detailed in Table 6.

**Table 6. Commercial Scup Quota Allocations for 2016-2018 by Quota Period**

| Quota Period | Percent Share | 2016 Quota |       | 2017 Initial Quota |       | 2018 Initial Quota |       |
|--------------|---------------|------------|-------|--------------------|-------|--------------------|-------|
|              |               | lb         | mt    | lb                 | mt    | lb                 | mt    |
| Winter I     | 45.11         | 9,232,987  | 4,188 | 8,291,190          | 3,761 | 7,822,778          | 3,548 |
| Summer       | 38.95         | 7,972,176  | 3,616 | 7,158,986          | 3,247 | 6,754,538          | 3,064 |
| Winter II    | 15.94         | 3,262,554  | 1,480 | 2,929,762          | 1,329 | 2,764,245          | 1,254 |
| Total        | 100.0         | 20,467,716 | 9,284 | 18,379,939         | 8,337 | 17,341,562         | 7,866 |

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

The quota period possession limits are shown in Table 7. The Winter I possession limit will drop to 1,000 lb (454 kg) upon attainment of 80 percent of that period’s allocation. If the Winter I quota is not fully harvested, the remaining quota is transferred to Winter II. 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**. The regulations specify that the Winter II possession limit increases consistent with the increase in the quota, as described in Table 8.

**Table 7. Commercial Scup Possession Limits by Quota Period**

| Quota Period | Percent Share | Federal Possession Limits (Per Trip) |        |
|--------------|---------------|--------------------------------------|--------|
|              |               | lb                                   | kg     |
| Winter I     | 45.11         | 50,000                               | 22,680 |
| Summer       | 38.95         | N/A                                  | N/A    |
| Winter II    | 15.94         | 12,000                               | 5,443  |
| Total        | 100.0         | N/A                                  | N/A    |

**Table 8. Potential Increase in 2016-2018 Winter II Possession Limits based on the Amount of Unused Scup Rolled over from Winter I to Winter II**

| Initial Winter II Possession Limit |       | Rollover from Winter I to Winter II |                   | Increase in Initial Winter II Possession Limit |       | Final Winter II Possession Limit after Rollover from Winter I to Winter II |       |
|------------------------------------|-------|-------------------------------------|-------------------|------------------------------------------------|-------|----------------------------------------------------------------------------|-------|
| Lb                                 | kg    | lb                                  | kg                | lb                                             | kg    | lb                                                                         | kg    |
| 12,000                             | 5,443 | 0-499,999                           | 0-226,796         | 0                                              | 0     | 12,000                                                                     | 5,443 |
| 12,000                             | 5,443 | 500,000-999,999                     | 226,796-453,592   | 1,500                                          | 680   | 13,500                                                                     | 6,123 |
| 12,000                             | 5,443 | 1,000,000-1,499,999                 | 453,592-680,388   | 3,000                                          | 1,361 | 15,000                                                                     | 6,804 |
| 12,000                             | 5,443 | 1,500,000-1,999,999                 | 680,389-907,184   | 4,500                                          | 2,041 | 16,500                                                                     | 7,484 |
| 12,000                             | 5,443 | 2,000,000-2,500,000                 | 907,185-1,133,981 | 6,000                                          | 2,722 | 18,000                                                                     | 8,165 |

## *Black Sea Bass*

This rule implements the Council’s revised ABC recommendation and the commercial and recreational catch limits associated with that ABC for fishing years 2016 and 2017. As described in the proposed rule for this action, the Council’s SSC revised its recommendation for the 2016 and 2017 black sea bass ABC in September 2015 based on additional analysis that relies more on measures of current abundance than the prior constant catch approach. The Council and the Commission’s Black Sea Bass Board have also revised their recommendations for 2016 and 2017, as outlined in the proposed rule to this action. Specifications for 2018 will be made following the completion of a new stock assessment in late 2016.

A commercial quota overage from fishing year 2014 is applicable to the 2016 black sea bass commercial quota. As a result, the regulations at 684.143(a)(2) require that the exact amount of the overage, in pounds, be deducted from a subsequent single year’s commercial quota. The 2016 commercial quota is reduced by 8,896 lb (4,035 kg) from 2,711,686 lb (1,230 mt) to 2,702,867 lb (1,226 mt). The 2016 commercial quota values in Table 9 include this deduction. Should a commercial quota or ACL accountability measure be necessary in 2017, notification will be published in the **Federal Register** prior to the start of the fishing year.

**Table 9. Black Sea Bass 2016-2017 Specifications**

|                               | 2016       |       | 2017       |       |
|-------------------------------|------------|-------|------------|-------|
|                               | million lb | mt    | million lb | mt    |
| ABC                           | 6.67       | 3,024 | 6.67       | 3,024 |
| ABC Landings Portion          | 5.53       | 2,510 | 5.53       | 2,510 |
| ABC Discards Portion          | 1.13       | 514   | 1.13       | 514   |
| Commercial ACL                | 3.15       | 1,428 | 3.15       | 1,428 |
| Commercial ACT                | 3.15       | 1,428 | 3.15       | 1,428 |
| Projected Commercial Discards | 0.44       | 198   | 0.44       | 198   |
| Commercial Quota              | 2.70       | 1,226 | 2.71       | 1,230 |

|                                 |      |       |      |       |
|---------------------------------|------|-------|------|-------|
| Recreational ACL                | 3.52 | 1,597 | 3.52 | 1,597 |
| Recreational ACT                | 3.52 | 1,597 | 3.52 | 1,597 |
| Projected Recreational Discards | 0.70 | 317   | 0.70 | 317   |
| Recreational Harvest Limit      | 2.82 | 1,280 | 2.82 | 1,280 |

### **Comments and Responses**

On November 9, 2015, NMFS published proposed specifications for Summer Flounder, Scup and Sea Bass for public notice and comment, and four comments were received. Generally, the four comments each stated that the proposed specifications were overly conservative for all three species, particularly for black sea bass and scup. One commenter asserted that the SSC’s scup recommendation should not be considered the best available scientific information because it is based on a scientific uncertainty buffer that is double what the Stock Assessment Working Group recommended. Two other commenters noted that the increase in the black sea bass population in southern New England is negatively impacting the lobster fishery and that the quotas should be increased or measures should be set so that the recreational season can last longer into the fall. A recreational fishing group commented that NMFS should set the summer flounder ABC equal to the OFL in each year, despite the SSC’s recommendation, because precaution is applied “excessively” throughout the stock assessment and SSC process. The group also stated that there should be no quota reductions for summer flounder until a sex-specific stock assessment can be conducted. This comment also asserted that the scup catch limits are overly conservative, but spoke in support of the revised black sea bass ABC recommendation.

No changes to the proposed specifications were made as a result of these comments. The specifications are based on the SSC’s advice and the best available scientific information. The

Council applied its Risk Policy to derive the scup and black sea bass specifications. The summer flounder specifications deviate from that Risk Policy, but are less conservative than the Risk Policy and closer to the commenter's request than had the Council used the Policy. However, as stated previously, the summer flounder specifications will not result in an unacceptably high likelihood of overfishing. For scup, the SSC deliberated on the stock assessment working group's advice, but determined additional scientific uncertainty had not been adequately incorporated, as is their purview. NMFS does not disagree with the SSC's recommendation and we are implementing the specifications as recommended by the Council.

### **Classification**

The Administrator, Greater Atlantic Region, NMFS, determined that this final rule is necessary for the conservation and management of the summer flounder, scup, and black sea bass fisheries and that it is consistent with the Magnuson-Stevens Act and other applicable laws. The Assistant Administrator for Fisheries, NOAA, finds good cause under 5 U.S.C. 553(d)(3) to waive the 30-day delay of effectiveness period for this rule, to ensure that the final specifications are in place on January 1, 2016. This action establishes specifications (i.e., annual quotas) for the summer flounder, scup, and black sea bass fisheries.

This rule is being issued at the earliest possible date. Preparation of the proposed rule was dependent on the submission of the EA/IRFA in support of the specifications that is developed by the Council. A complete document was received by NMFS in early October 2015. Documentation in support of the Council's recommended specifications is required for NMFS to provide the public with information from the environmental and economic analyses as required in rulemaking. The proposed rule published on November 9, 2015, with a 15-day comment

period ending November 24, 2015. Publication of the adjusted summer flounder quota at the start of the fishing year that begins January 1, 2015, is required by the order of Judge Robert Doumar in *North Carolina Fisheries Association v. Daley*.

If the 30-day delay in effectiveness is not waived, there will be no quota specifications for the affected fisheries on January 1, 2016, which would significantly confuse the public and substantially complicate the cooperative management regime governing these fisheries. The summer flounder, scup, and black sea bass fisheries are all expected, based on historic participation and harvest patterns, to be very active at the start of the fishing season in 2016. Without these specifications in place on January 1, 2016, individual states will be unable to set commercial possession and/or trip limits, which apportion the catch over the entirety of the calendar year. NMFS will be unable to control harvest in any way, as there will be no quotas in place for any of the three species until the regulations are effective. NMFS will be unable to control harvest or close the fishery, should landings exceed the quotas. All of these factors could result in a race for fish, wherein uncontrolled landings could occur. Disproportionately large harvest occurring within the first weeks of 2016 could have distributional effects on other quota periods, and would disadvantage some gear sectors or owners and operators of smaller vessels that typically fish later in the fishing season. There is no historic precedent by which to gauge the magnitude of harvest that might occur, should quotas for these three species not be in place during the first weeks of 2016. It is reasonable to conclude that the commercial fishing fleet possesses sufficient capacity to exceed the established quotas for these three species before the regulations would become effective, should quotas not be in place on January 1, 2016. Should

this occur, the fishing mortality objectives for all three species would be compromised, thus undermining the intent of the rule.

For these reasons, a 30-day delay in effectiveness would be contrary to the public interest, and NMFS is waiving the requirement.

These specifications are exempt from the procedures of Executive Order 12866.

This final rule does not duplicate, conflict, or overlap with any existing Federal rules.

A FRFA was prepared pursuant to 5 U.S.C. 604(a), and incorporates the IRFA, a summary of the significant issues raised by the public comments in response to the IRFA, NMFS's responses to those comments, and a summary of the analyses completed to support the action. A copy of the EA//IRFA is available from the Council (see **ADDRESSES**).

The preamble to the proposed rule included a detailed summary of the analyses contained in the IRFA, and that discussion is not repeated here.

### **Final Regulatory Flexibility Analysis**

*A Summary of Significant Issues Raised by the Public in Response to the Summary of the Agency's Assessment of Such Issues, and a Statement of Any Changes Made in the Final Rule as a Result*

No changes to the proposed rule were required to be made as a result of public comments. None of the comments received raised specific issues regarding the economic analyses summarized in the IRFA or the economic impacts of the rule more generally. A summary of the comments received, and our responses, can be found above in the "Comments and Responses" section of this rule's preamble.

*Description and Estimate of Number of Small Entities to Which the Rule Will Apply*

The Small Business Administration defines a small business in the commercial harvesting sector as a firm with receipts (gross revenues) of up to \$5.5 and \$20.5 million for shellfish and for finfish business, respectively. A small business in the recreational fishery is a firm with receipts of up to \$7.5 million. 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 2016-2018 specifications could affect 952 small entities and 8 large entities, assuming average revenues for the 2012-2014 period.

*Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements*

No additional reporting, recordkeeping, or other compliance requirements are included in this final rule.

*Description of the Steps the Agency has Taken to Minimize the Significant Economic Impact on Small Entities Consistent with the Stated Objectives of Applicable Statutes*

Specification of commercial quotas and possession limits is constrained by the conservation objectives set forth in the FMP and implemented at 50 CFR part 648 under the authority of the Magnuson-Stevens Act. Economic impacts of changes in year-to-year quota specifications may be offset by adjustments to such measures as commercial fish sizes, changes to mesh sizes, gear restrictions, or possession and trip limits that may increase efficiency or value of the fishery. The Council recommended no such measures, and so none are implemented in this final rule. Therefore, the economic impact analysis of the action is evaluated on the different levels of quota specified in the alternatives. The ability of NMFS to minimize economic impacts

for this action is constrained by quota levels that provide the maximum availability of fish while still ensuring that the required objectives and directives of the FMP, its implementing regulations, and the Magnuson-Stevens Act are met. In particular, the Council's SSC has made recommendations for the 2016-2017 ABC level for all three stocks, and the 2018 ABC level for scup and black sea bass. NMFS considers these recommendations to be consistent with National Standard 2 of the Magnuson-Stevens Act, which requires that the best available scientific information be used in fishery decision making.

The economic analysis for the 2016-2018 specifications assessed the impacts for quota alternatives that achieve the aforementioned objectives. The Council analyzed four sets of combined catch limit alternatives for the 2016-2018 summer flounder, scup, and black sea bass fisheries. Please see the EA and IRFA for a detailed discussion on each alternative.

Through this final rule, NMFS implements Alternative 1 (the Council's preferred alternative), as modified by the Council's revised recommendation for black sea bass. This alternative consists of the quota levels that pair the lowest economic impacts to small entities and meet the required objectives of the FMP and the Magnuson-Stevens Act. The respective specifications contained in this final rule for all three species were selected because they satisfy NMFS' obligation to implement specifications that are consistent with the goals, objectives, and requirements of the FMP, its implementing regulations, and the Magnuson-Stevens Act. The fishing mortality rates associated with the catch limits for all three species all have acceptable likelihoods of preventing overfishing in any of the next three years.

Alternative 3 for each species, contained the most restrictive options (i.e., lowest total landing levels) for each fishery have the highest potential adverse economic impacts on small

entities in the form of potential foregone fishing opportunities.. Some of the catch limits associated with Alternatives 3 pre-date the ABC framework, thus the information for these alternatives is presented in terms of landing levels. Alternative 3 was not preferred by the Council of NMFS 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 4 contained the least restrictive catch limits for each fishery and would have the lowest economic impacts on small entities. This alternative is not consistent with the goals and objectives of the FMP and the Magnuson-Stevens Act because it would implement catch limits much higher than the recommendations of the Council's SSC. This could result in overfishing of the resources and substantially compromise the mortality and/or stock rebuilding objectives for each species, contrary to laws and regulations.

Alternative 2 (status quo), would maintain the current 2015 ABCs for each fishery, and would, in the short-term, have negligible economic impacts on small entities. For summer flounder and scup, this alternative is not consistent with the goals and objectives of the FMP and the Magnuson-Stevens Act because it would leave in place ABCs higher than the recommendations of the Council's SSC. This could result in overfishing of the resources and substantially compromise the mortality and/or stock rebuilding objectives for each species, contrary to laws and regulations. For black sea bass, this alternative is more restrictive than is necessary and would have unnecessary negative economic impacts.

Likewise, a “true” no action alternative, wherein no quotas are established for the coming fishing year, was excluded from analysis because it is not consistent with the goals and objectives of the FMP and the Magnuson-Stevens Act.

### *Small Entity Compliance Guide*

Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996 states that, for each rule or group of related rules for which an agency is required to prepare a FRFA, the agency shall publish one or more guides to assist small entities in complying with the rule, and shall designate such publications as "small entity compliance guides." The agency shall explain the actions a small entity is required to take to comply with a rule or group of rules. As part of this rulemaking process, a small entity compliance guide will be sent to all holders of Federal permits issued for the summer flounder, scup, and black sea bass fisheries. In addition, copies of this final rule and guide (i.e., permit holder letter) are available from NMFS (see **ADDRESSES**) and at the following website: <http://www.greateratlantic.fisheries.noaa.gov>.

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

Dated: December 21, 2015

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Eileen Sobeck,

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