

Type of Proceeding	Fee
(v) A request for an order compelling a carrier to file a common carrier rate	200.
(60) A labor arbitration proceeding	200.
(61) (i) An appeal of a Surface Transportation Board decision on the merits or petition to revoke an exemption pursuant to 49 U.S.C. 10502(d)	200.
(ii) An appeal of a Surface Transportation Board decision on procedural matters except discovery rulings	250.
(62) Motor carrier undercharge proceeding	200.
(63) Expedited relief for service inadequacies:	
(i) A request for expedited relief under 49 U.S.C. 11123 and 49 CFR part 1146 for service emergency	200.
(ii) A request for temporary relief under 49 U.S.C. 10705 and 11102, and 49 CFR part 1147 for service inadequacy	200.
(64) A request for waiver or clarification of regulations except one filed in an abandonment or discontinuance proceeding, or in a major financial proceeding as defined at 49 CFR 1180.2(a)	400.
(86) Informal opinions:	
(i) A request for an informal opinion not otherwise covered	1,100.
(ii) A proposal to use on a voting trust agreement pursuant to 49 CFR 1013 and 49 CFR 1180.4(b)(4)(iv) in connection with a major control proceeding as defined at 49 CFR 1180.2(a)	3,500.
(iii) A request for an informal opinion on a voting trust agreement pursuant to 49 CFR 1013.3(a) not otherwise covered	350.
(88) Basic fee for STB adjudicatory services not otherwise covered	200.
(98) Processing the paperwork related to a request for the Carload Waybill Sample to be used in a Board or State proceeding that:	
(i) Does not require a Federal Register notice:	
(a) Set cost portion	100.
(b) Sliding cost portion	32 per party.
(ii) Does require a Federal Register notice:	
(a) Set cost portion	300.
(b) Sliding cost portion	32 per party.
(100) Uniform Railroad Costing System (URCS) software and information:	
(i) Initial PC version URCS Phase III software program and manual	50.
(ii) Updated URCS PC version Phase III cost file—per year	25.
(iii) Public requests for <i>Source Codes</i> to the PC version URCS Phase III	100.
(101) Carload Waybill Sample data or recordable disk (R-CD):	
(i) Requests for Public Use File on R-CD—per year	250.
(ii) Waybill—Surface Transportation Board or State proceedings on R-CD—per year	500.
(iii) User Guide for latest available Carload Waybill Sample	50.
(iv) Specialized Programming for Waybill requests to the Board	76 per hour.

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 040113012-4093-02; I.D. 121903D]

RIN 0648-AR62

Fisheries of the Northeastern United States; Summer Flounder, Scup, and Black Sea Bass Fisheries; Framework Adjustment 4

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and

Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule for summer flounder, scup, and black sea bass fisheries.

SUMMARY: NMFS issues a final rule implementing measures contained in Framework Adjustment 4 (Framework 4) to the Summer Flounder, Scup, and Black Sea Bass Fishery Management Plan (FMP) that would allow for the transfer at sea of scup between commercial fishing vessels, and clarify the circumstances under which a vessel must operate with the specified mesh. Regulations regarding the establishment and administration of research set-aside (RSA) quota would also be amended to clarify how unused RSA quota is to be returned to the fishery.

DATES: This rule is effective April 28, 2004.

ADDRESSES: Copies of the Framework 4 document, its Regulatory Impact Review (RIR), the Initial Regulatory Flexibility Analysis (IRFA), the Environmental Assessment (EA), 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>. The Final Regulatory Flexibility Analysis (FRFA) consists of the IRFA, public comments and responses, and the summary of impacts and alternatives contained in this final rule. Copies of the small entity compliance guide are

available from Patricia A. Kurkul, Regional Administrator, NMFS, Northeast Regional Office, One Blackburn Drive, Gloucester, MA 01930.

FOR FURTHER INFORMATION CONTACT: Paul Perra, Fishery Policy Analyst, (978) 281-9153, fax (978) 281-9135, e-mail paul.perra@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 at 50 CFR part 648, subparts A (general provisions), and H (scup) describe the process for specifying commercial scup measures that apply in the Exclusive Economic Zone (EEZ). The states manage these fisheries within 3 geographic miles of their coasts, under the Commission's Interstate Summer Flounder, Scup, and Black Sea Bass Fishery Management Plan. The Federal regulations govern vessels fishing in the EEZ, as well as vessels possessing a Federal fisheries permit, regardless of where they fish.

NMFS published a proposed rule (69 FR 3300, January 23, 2004) to implement Framework 4, pursuant to § 648.127(a), to reduce regulatory discards of scup that can occur when vessels catch large amounts of scup, which would exceed their trip limits, and must discard them. The majority of these discarded scup would die, and represent fishing mortality not accounted for by landings that would be recorded under the quota. Framework 4 would 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 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. Also, the regulations allow for the rollover of unused quota from the Winter I period to the Winter II period within a fishing year (68 FR 62250, November 3, 2003). The final rule to implement the 2004 annual quota specifications (69 FR 2074, January 14, 2004) 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.

Framework 4 allows for the transfer at sea of scup between commercial fishing vessels, subject to certain requirements intended to improve the enforceability of the transfers and to ensure that they are used to respond to occasional unanticipated catches, rather than targeted fishing. Any amount of scup less than the possession limit could be transferred between two vessels, given the following conditions: Transfers may only occur between vessels with Federal scup permits; transfers may only occur seaward of a boundary line that is roughly 20 nm from shore; the donating and receiving vessels must possess gear that meets the regulatory requirements at § 648.123(a)(2), (3), and (4) for commercial scup fishing gear; transfers may occur in the Winter I or Winter II periods only; only one transfer will be allowed per fishing trip for the donor vessel; after the donor vessel removes only enough scup to attain the scup possession limit, the transfer must include the entire codend, with all its contents; only scup and its normal bycatch may be transferred; only scup may be retained by the receiving vessel; while fishing for scup, all other nets must be stored in accordance with § 648.23(b); and the donating and receiving vessels must report the transfer amount on the vessel trip report for each vessel.

Framework 4 was initiated to address discard issues, because otter trawl vessels targeting scup occasionally make very large hauls consisting almost entirely of scup, which can easily exceed the scup possession limit. Currently, when one of these large hauls occurs, most scup in the net are dead, and all scup in excess of the possession limit must be discarded. Under

Framework 4, the contents of a large scup haul could be transferred to another federally permitted scup vessel under prescribed circumstances. This would convert regulatory discards of scup into landings, thus reducing bycatch and improving the efficiency of the commercial scup fishery. Both the donor and receiver vessels could benefit financially. The donor vessel could benefit by selling fish that would otherwise be discarded, and the receiver vessel could benefit from obtaining fish while using less resources (e.g., fuel) than under a typical fishing operation. It is possible that allowing the transfer of scup at sea could result in an earlier closure of the fishery because of higher scup retained catch rates. However, discard rates of scup are expected to be less during a scup fishery closure, because vessels would not be directing on scup. Thus, the measures in the final rule should serve to minimize bycatch and improve efficiency in fleet operations.

It is the Council's intention that the framework adjustment apply only to the scup otter trawl fishery, and that the transfer of scup at sea would occur only under safe weather and sea conditions, as determined by the participants in any such transfer.

This final rule implements the conditions on the transfer of scup at sea that the Council included in Framework 4, as summarized in this preamble. In addition, NMFS has defined a boundary only beyond which transfers of scup may occur. This boundary is intended to improve enforceability of these regulations and to restrict transfers at sea to vessels already on the fishing grounds. The boundary line begins at 40°50' N. lat., 70°00' W. long., and runs south to connect the points at 40°15' N. lat., 73°30' W. long.; 37°50' N. lat., 75°00' W. long.; and 35°30' N. lat., 75°00' W. long. Further, this final rule modifies the Council's recommendations that the transfer include the entire codend, and that only scup and its normal bycatch could be transferred. This rule requires that the donor vessel may only remove enough scup from the net to attain the scup possession limit for the donor vessel, and that, after removal of scup from the net by the donor vessel, the entire codend, with all its contents, must be transferred to the receiving vessel. This is intended to allow for retention of scup by the donor vessel up to its possession limit, and to improve at-sea enforcement of the proposed measures.

Need for Correction/Clarification

This final rule also clarifies the circumstances under which a vessel

must operate consistent with the specified mesh size restrictions for otter trawl vessels that possess scup. This final rule modifies current regulations to indicate that no owner or operator of an otter trawl vessel that is issued a scup moratorium permit may possess 500 lb (226.8 kg) or more of scup from November 1 through April 30, or 100 lb (45.4 kg) or more of scup from May 1 through October 31, unless fishing with nets that have a minimum mesh size of 4.5-inch (11.4-cm) diamond mesh for no more than 25 continuous meshes forward of the terminus of the codend, and with at least 100 continuous meshes of 5.0-inch (12.7-cm) mesh forward of the 4.5-inch (11.4-cm) mesh, and all other nets are stored in accordance with § 648.23(b). For trawl nets with codends (including an extension) less than 125 meshes, the entire trawl net must have a minimum mesh size of 4.5 inches (11.4 cm) throughout the net. Scup on board these vessels must be stored separately and kept readily available for inspection.

Also, current regulations state that unused RSA quota from disapproved RSA proposals may be reallocated to the respective commercial and recreational fisheries by the Regional Administrator. However, the regulations are silent regarding the reallocation of RSA quota from approved projects that are unable to utilize the entire amount of their RSA allocation. Framework 1 to the FMP states that, in the event approved proposals do not make use of any or all of the set-aside quota for a particular species, the Regional Administrator is authorized to restore the unutilized portion to its respective commercial and recreational fisheries. In order to clarify the circumstances under which the Regional Administrator must reallocate unutilized RSA quota, this rule modifies the RSA provisions that appear in the Atlantic mackerel, squid, and butterfish regulations. Therefore, this final rule modifies current regulations to indicate that, if an RSA proposal is disapproved, or if the Regional Administrator determines that the allocated RSA quota cannot be utilized by a project, the Regional Administrator shall reallocate the unused amount of RSA quota to the respective commercial and recreational fisheries by publication of a notice in the **Federal Register** in compliance with the Administrative Procedure Act, provided that the reallocation of the unused amount of RSA quota is in accord with National Standard 1, and must be available for harvest before the end of the fishing year in which the initial RSA allocation was made. Any reallocation of unused RSA quota will

be consistent with the proportional division of quota between the commercial and recreational fisheries in the relevant FMP, and allocated to the remaining quota periods for the fishing year, proportionally. The intent of this measure is to ensure that unused quota be returned to the fishery, to the extent possible.

Comments and Responses

Only one comment on the proposed rule was received prior to the end of the comment period.

Comment: The commenter expressed general support for environmental reforms, marine sanctuaries, and improved enforcement of fishery regulations. The commenter suggested that the TAC be reduced for all quota's by 50 percent and by 10 percent in each subsequent year thereafter. The commenter also suggested that the commercial interests not sit on the Councils. The commenter did not support the use of research quotas, and stated researchers were taking too many fish.

Response: This final rule is designed to provide for the fair and efficient use of the Federal scup quotas. While NMFS acknowledges the importance of the issues raised by the commenter, they are outside the scope of this rulemaking.

The commenter gave no specific rationale for her suggestion that the quotas be reduced. The reasons presented by the Council and NMFS for implementing this final rule are discussed in the preambles to both the proposed and final rules, and are sufficiently analyzed within the Framework 4 documents. Basically, this final rule is designed to reduce scup mortality and enhance stock rebuilding. This final rule was developed based on the best data available at the time, in accordance with the process established by the Magnuson-Stevens Fishery Conservation and Management Act. There is no known scientific basis for reducing the quotas as suggested by the commenter. Also, the research quotas establish a unique and equitable mechanism to provide funding for fisheries research while not overfishing the stocks.

Classification

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

Included in this final rule is the Final Regulatory Flexibility Analysis (FRFA), prepared pursuant to 5 U.S.C. 604(a). The FRFA incorporates the IRFA, the comments and responses to the proposed rule, and the analyses completed to support the action. A copy

of the 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

Statement of Objective and Need

A description of the legal basis and reasons for the action, and its objectives, can be found in the preamble to the proposed rule (69 FR 3300, January 23, 2004) and is not repeated here.

Summary of Significant Issues Raised in Public Comments

One comment was received on the proposed rule, but the comment did not specifically refer to the IRFA or the economic impacts of the rule. The commenter was not supportive of the proposed measures, but offered no rationale for making changes. No changes to the proposed rule were required to be made as a result of public comments. For a summary of the comment, refer to the section above entitled "Comments and Responses."

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

Fishing vessels issued Federal scup moratorium permits represent the universe of small entities potentially affected by this action. Data from the Northeast permit application database show that 878 commercial vessels held scup moratorium permits in 2001. Since all permit holders may not actually target scup, the more immediate impact of the action will be derived by the subset of permit holders actively participating in this fishery that choose to take advantage of the opportunity to transfer scup at sea.

Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

There are no new recordkeeping or reporting requirements proposed in this final rule.

Description of the Steps Taken to Minimize Economic Impact on Small Entities

All vessels that would be impacted by this final rulemaking are considered to be small entities (i.e., commercial fishing entities with less than \$3.5 million in gross receipts); therefore, there would be no disproportionate impacts between large and small entities.

The purpose of this framework is to reduce discards and improve efficiency in the scup fishery by allowing for the

transfer at sea of scup between commercial fishing vessels, and clarifying the circumstances under which a vessel must operate with the specified mesh. Alternative 1 (No Action) would not affect the manner in which the commercial fishery operates or the quantity of scup landed in the commercial sector. The Preferred Alternative will allow for the transfer of scup at sea; both the donor and receiver vessels may benefit economically. The owner of the donor vessel may benefit by selling fish that would otherwise be discarded to the owner of the receiving vessel and the owner of the receiving vessel may benefit from acquiring fish obtained from fishing activity of another vessel, thus requiring less resources (e.g., less fuel and wear and tear on the net) than under a typical fishing operation. It is possible that allowing the transfer of scup at sea could result in the scup fishery being closed earlier because of higher retained catch rates. This would depend on the number of vessels that have large scup catches, and the opportunity to conduct transfers. If a scup period were to close sooner under the Preferred Alternative, the reduction of discards realized through the ability to transfer may not offset the level of increased discards that may occur during a longer closure. However, scup discards are expected to be lower during a closure of the directed scup fishery than before the fishery closes, because vessels will not be directing on scup. Also, it is reasonable to expect that the ability to transfer scup would be limited to a somewhat narrow window of time and would depend on the proximity of a nearby, permitted scup vessel, and how quickly that vessels could retrieve the codend of the donor vessel. Large catches of scup in the net die quickly and may sink to a point where they are irretrievable or, if held in the codend on board the donor vessel for too long, they spoil and become unmarketable. A longer closure may also have adverse economic impacts if affected fishermen do not have suitable alternative opportunities. However, since there are no data available to determine accurately how many vessels would participate in the transfer of scup at sea and how much scup would be transferred at sea under this alternative, the full impact of this alternative on early closures cannot be fully assessed.

The Council's recommendation on this action was predicated upon the need to make a decision to either allow at-sea transfers of scup to reduce regulatory discards (the preferred alternative), or to maintain the current prohibition on at-sea transfers (the no

action alternative). Other alternatives to address the larger issues of regulatory discards and/or economic efficiency of the fleet were not considered to be within the scope of this action (which is a Framework Adjustment and therefore of limited scope). The Council did identify and discuss additional options to be part of the preferred alternative, but these were determined to be either unenforceable (e.g., allowing transfers of scup in excess of the possession limit to occur off the fishing grounds), cost prohibitive (e.g., requiring vessels to obtain a vessel monitoring system prior to participating), or not practicable (e.g., requiring participating vessels to contact NMFS personnel prior to conducting an at-sea transfer).

Section 212 of the Small Business Regulatory Enforcement and 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 scup moratorium vessel permits. In addition, copies of this final rule and guide (i.e., permit holder letter) are available from NMFS (see ADDRESSES) and at the following web site: <http://www.nero.noaa.gov/>.

Dated: March 23, 2004.

Rebecca Lent,

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

■ For the reasons stated in the preamble, 50 CFR part 648 is 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 § 648.6, paragraph (a)(1) is amended by adding a new final sentence to read as follows:

§ 648.6 Dealer/processor permits.

(a) *General.* (1) * * * Persons aboard vessels receiving transfers of scup at sea from other vessels are deemed not to be dealers, and are not required to possess a valid dealer permit under this section, for purposes of receiving scup, provided the vessel complies with § 648.13(2).

* * * * *

■ 3. In § 648.13, paragraph (i) is added to read as follows:

§ 648.13 Transfers at sea.

* * * * *

(i) *Scup.* (1) Except as provided in paragraph (i)(2) of this section, all persons or vessels issued a Federal scup permit are prohibited from transferring, or attempting to transfer, at sea any scup to any vessel, and all persons or vessels are prohibited from transferring, or attempting to transfer, at sea to any vessel any scup while in the EEZ, or any scup taken in or from the EEZ portion of the Scup Management Unit.

(2) The owner or operator of a vessel issued a Federal scup permit under § 648.4(a)(6)(i)(A) may transfer at sea scup taken in or from the EEZ portion of the Scup Management Unit, provided:

(i) The transfer occurs between two vessels with Federal scup permits;

(ii) The transfer occurs seaward of a boundary line that begins at 40°50' N. lat., 70°00' W. long., and runs south to connect points at 40°15' N. lat., 73°30' W. long.; 37°50' N. lat., 75°00' W. long.; and 35°30' N. lat., 75°00' W. long.;

(iii) The donating and receiving vessels possess gear that meets the requirements at § 648.123(a)(2), (3), and (4) for commercial scup fishing gear;

(iv) The transfer occurs in the Winter I or Winter II periods of the scup fishing year;

(v) There is only one transfer per fishing trip for the donor vessel;

(vi) The donor vessel removes only enough scup from the net to attain the scup possession limit;

(vii) After removal of scup from the net by the donor vessel, the entire codend, with all its contents, is transferred to the receiving vessel;

(viii) Only scup in an amount not to exceed the possession limit are retained by the receiving vessel;

(ix) While fishing for scup, all other nets are stored in accordance with § 648.23(b)(1); and

(x) The donating and receiving vessels report the transfer amount on the vessel trip report for each vessel.

■ 4. In § 648.14, new paragraph (k)(13) is added to read as follows:

§ 648.14 Prohibitions.

(k) * * *

(13) Transfer scup at sea, or attempt to transfer at sea to any vessel, any scup taken from the EEZ, unless in compliance with the provisions of § 648.13(i).

* * * * *

■ 5. In § 648.21, paragraph (g)(5) is revised to read as follows:

§ 648.21 Procedures for determining initial annual amounts.

(g) * * *

(5) If a proposal is disapproved by the Regional Administrator or the NOAA Grants Office, or if the Regional Administrator determines that the allocated research quota cannot be utilized by a project, the Regional Administrator shall reallocate the unallocated or unused amount of research quota to the respective commercial and recreational fisheries by publication of a notice in the **Federal Register** in compliance with the Administrative Procedure Act, provided:

(i) The reallocation of the unallocated or unused amount of research quota is in accord with National Standard 1, and can be available for harvest before the end of the fishing year for which the research quota is specified; and

(ii) Any reallocation of unallocated or unused research quota shall be consistent with the proportional division of quota between the commercial and recreational fisheries in the relevant FMP and allocated to the remaining quota periods for the fishing year proportionally.

* * * * *

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

§ 648.123 Gear restrictions.

(a) * * *

(1) *Minimum mesh size.* No owner or operator of an otter trawl vessel that is issued a scup moratorium permit may possess 500 lb (226.8 kg) or more of scup from November 1 through April 30, or 100 lb (45.4 kg) or more of scup from May 1 through October 31, unless fishing with nets that have a minimum

mesh size of 4.5-inch (11.4-cm) diamond mesh for no more than 25 continuous meshes forward of the terminus of the codend, and with at least 100 continuous meshes of 5.0-inch (12.7-cm) mesh forward of the 4.5-inch (11.4-cm) mesh, and all other nets are stowed in accordance with § 648.23(b)(1). For trawl nets with codends (including an extension) less than 125 meshes, the entire trawl net must have a minimum mesh size of 4.5 inches (11.4 cm) throughout the net. Scup on board these vessels shall be stowed separately and kept readily available for inspection. Measurement of nets will be in conformity with § 648.80(f)(2)(ii).

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