

of Energy Effects for any “significant energy action.” 66 FR 28355 (May 22, 2001). Under the Executive Order, a “significant energy action” is defined as any action by an agency (normally published in the **Federal Register**) that promulgates or is expected to lead to the promulgation of a final rule or regulation (including notices of inquiry, advance notices of proposed rulemaking, and notices of proposed rulemaking) (1)(i) that is a significant regulatory action under Executive Order 12866 or any successor order, and (ii) is likely to have a significant adverse effect on the supply, distribution, or use of energy; or (2) that is designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. FRA has evaluated this final rule in accordance with Executive Order 13211. FRA has determined that this final rule will not have a significant adverse effect on the supply, distribution, or use of energy and the Administrator of the Office of Information and Regulatory Affairs has not designated it as a significant energy action.

Where:

Prior Threshold = \$6,600 (for rail equipment accidents/incidents that occur during calendar year 2001);

Wn = New average hourly wage rate (\$) = 18.188333;

Wp = Prior average hourly wage rate (\$) = 17.763333;

En = New equipment average PPI value (\$) = 135.733333;

Ep = Prior equipment average PPI value (\$) = 135.633333.

9. The result of these calculations is \$6,682.254777. Since the result is rounded to the nearest \$100, the new reporting threshold for rail equipment accidents/incidents that occur during calendar year 2002 is \$6,700, which represents an \$100 increase from the monetary threshold for calendar years 1998 through 2001.

Issued in Washington, DC on December 17, 2001.

**Allan Rutter,**

*Administrator, Federal Railroad Administration.*

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**List of Subjects in 49 CFR Part 225**

Investigations, Penalties, Railroad safety, Reporting and recordkeeping requirements.

**The Final Rule**

In consideration of the foregoing, FRA amends part 225, title 49, Code of Federal Regulations as follows:

**PART 225—RAILROAD ACCIDENTS/ INCIDENTS: REPORTS CLASSIFICATION, AND INVESTIGATIONS**

1. The authority citation for part 225 continues to read as follows:

**Authority:** 49 U.S.C. 20103, 20107, 20901, 20902, 21302, 21311; 49 U.S.C. 103; 49 CFR 1.49.

2. By amending § 225.19 by revising the first sentence of paragraph (c) and revising paragraph (e) to read as follows:

**§ 225.19 Primary groups of accidents/ incidents.**

(c) Rail equipment accidents/ incidents are collisions, derailments, fires, explosions, acts of God, and other events involving the operation of on-

track equipment (standing or moving) that result in damages higher than the current reporting threshold (i.e., \$6,300 for calendar years 1991 through 1996, \$6,500 for calendar year 1997, \$6,600 for calendar years 1998 through 2001, and \$6,700 for calendar year 2002) to railroad on-track equipment, signals, tracks, track structures, or roadbed, including labor costs and the costs for acquiring new equipment and material.

\* \* \*

(e) The reporting threshold is \$6,300 for calendar years 1991 through 1996. The reporting threshold is \$6,500 for calendar year 1997, \$6,600 for calendar years 1998 through 2001, and \$6,700 for calendar year 2002. The procedure for determining the reporting threshold for calendar year 1997 and later appears as appendix B to part 225.

3. Part 225 is amended by revising paragraphs 8 and 9 of appendix B to read as follows:

**Appendix B to Part 225—Procedure for Determining Reporting Threshold**

\* \* \*

8. Formula:

$$\text{New Threshold} = \text{Prior Threshold} \times \left\{ 1 + 0.5 \frac{(W_n - W_p)}{W_p} + 0.5 \frac{(E_n - E_p)}{100} \right\}$$

**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

**50 CFR Part 648**

[Docket No. 011109274–1301–02; I.D. 102501B]

**RIN 0648–AP06**

**Fisheries of the Northeastern United States; Summer Flounder, Scup, and Black Sea Bass Fisheries; 2002 Specifications**

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

**ACTION:** Final rule, final 2002 specifications, and preliminary commercial quota adjustment; notification of 2002 commercial summer flounder quota harvest for the States of Maine and Delaware.

**SUMMARY:** NMFS issues final specifications for the 2002 summer flounder, scup, and black sea bass fisheries and makes preliminary adjustments to the 2002 commercial

quotas for these fisheries. This final rule specifies allowed harvest limits for both commercial and recreational fisheries, as well as other commercial management measures, including scup and black sea bass possession limits and gear modifications. This action also prohibits federally permitted commercial vessels from landing summer flounder in the States of Delaware and Maine in 2002. Regulations governing the summer flounder fishery require publication of this notification to advise these states, Federal vessel permit holders and Federal dealer permit holders that no commercial quota is available for landing summer flounder in Delaware and Maine in 2002. The intent of this action is to comply with implementing regulations for the Fishery Management Plan for the Summer Flounder, Scup, and Black Sea Bass Fisheries (FMP), which require NMFS to publish measures for the upcoming fishing year that will prevent overfishing of these fisheries.

**DATES:** The 2002 final specifications are effective from January 1, 2002, through December 31, 2002. The prohibition on

landings of summer flounder in Delaware and Maine by Federal permit holders is effective 0001 hours January 1, 2002, through 2400 hours December 31, 2002. Sections 648.14 (a)(92), 648.14 (u)(1), 648.123 (a)(1), 648.143 (a), 648.144 (a)(1)(i), 648.144 (b)(2), and 648.145 (d) are effective February 25, 2002.

**ADDRESSES:** Copies of supporting documents used by the Summer Flounder, Scup, and Black Sea Bass Monitoring Committees; the Regulatory Impact Review (RIR), the Final Regulatory Flexibility Analysis (FRFA) contained within the RIR, and the Environmental Assessment (EA) are available from the Northeast Regional Office, National Marine Fisheries Service, One Blackburn Drive, Gloucester, MA 01930-2298. The EA/RIR/FRFA is also accessible via the Internet at <http://www.nero.nmfs.gov>.

**FOR FURTHER INFORMATION CONTACT:** Richard A. Pearson, Fishery Policy Analyst, (978) 281-9279, fax (978) 281-9135, e-mail [rick.a.pearson@noaa.gov](mailto:rick.a.pearson@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 units specified in the FMP include summer flounder (*Paralichthys dentatus*) in U.S. waters of the Atlantic Ocean from the southern border of North Carolina northward to the U.S./Canada border, and scup (*Stenotomus chrysops*) and black sea bass (*Centropristis striata*) in U.S. waters of the Atlantic Ocean from 35°13.3' N. lat. (the latitude of Cape Hatteras Light, NC) northward to the U.S./Canada border. Implementing regulations for these fisheries are found at 50 CFR part 648, subparts A, G (summer flounder), H (scup), and I (black sea bass).

Pursuant to §§ 648.100 (summer flounder), 648.120 (scup), and 648.140 (black sea bass), the Administrator, Northeast Region, NMFS, (Regional Administrator) implements measures for the fishing year to assure that the target fishing mortality rate (F) or exploitation rate for each fishery, as specified in the FMP, is not exceeded. The target F or exploitation rate and management measures (e.g., commercial quotas, recreational harvest limits, minimum mesh requirements, minimum fish sizes, possession limits, and other gear

restrictions) are summarized below, by species. Detailed background information regarding the status of the summer flounder, scup and black sea bass stocks and the development of the 2002 specifications for these species was provided in the proposed specifications for the 2002 summer flounder, scup and black sea bass fisheries (66 FR 58097, November 20, 2001). That information is not repeated here. NMFS has considered the comments received during the comment period and, other than a minor change to black sea bass gear measures (escape vents) to reflect a clarification provided by the Council, publishes these final specifications without change from those in the proposed rule.

NMFS will establish the 2002 recreational management measures for summer flounder, scup and black sea bass by publishing a proposed and final rule in the Federal Register at a later date, following receipt of the Council's recommendations, as specified in the FMP.

**Regulatory Amendment for Summer Flounder, Scup and Black Sea Bass**

NMFS has published proposed regulations to implement a regulatory amendment (66 FR 64392, December 13, 2001) that would revise the way in which the commercial quotas for summer flounder, scup and black sea bass are adjusted if landings in any fishing year exceed the quota allocated (thus resulting in a quota overage). The FMP currently requires that any landings in excess of a commercial quota allocation for a state or period in one year must be deducted from that state's or period's annual quota allocation for the following year. This has created problems because complete landings data for the year are not available until after the beginning of the next fishing year. As a result, it is impossible under the existing system to compile complete landings data for one fishing year, establish overages, and finalize adjustments for the following year prior to the start of the fishing year on January 1st. It has often been necessary for NMFS to publish several subsequent quota adjustments throughout the fishing year as additional landings data from the prior year became available. These adjustments have complicated the resource management efforts of state marine fisheries agencies, and have hampered planning by commercial fishers.

NMFS has proposed in the regulatory amendment to establish a cut-off date of October 31 for landings data to be used in calculating quota overages and

making the resultant adjustments to the quotas for the following fishing year. Any additional overages due to landings occurring after October 31, or landings reported late, would be deducted from a state's (or period's) quota allocation for the subsequent year. The quota overages reflected in this final rule for summer flounder, scup and black sea bass are consistent with the measure proposed in the regulatory amendment and are based on landings reported for the period January 1 - October 31, 2001. If the final measures implemented by NMFS to address the quota overage determination problem differ from those contained in the proposed rule, NMFS will publish a notification of any necessary quota adjustments for 2002 in January 2002.

**Summer Flounder**

The FMP specifies a target F for 2002 of  $F_{MAX}$ , the level of fishing that produces maximum yield per recruit. Best available data indicate that  $F_{MAX}$  is currently equal to 0.26 (equal to an exploitation rate of about 22 percent from fishing). The total allowable landings (TAL) associated with the target F are allocated 60 percent to the commercial sector and 40 percent to the recreational sector. The commercial quota is then allocated to the coastal states based upon percentage shares specified in the FMP. The recreational harvest limit is specified on a coastwide basis. Recreational measures will be the subject of a separate rulemaking early in 2002.

This final rule implements the specifications contained in the proposed rule, except that the research quota set-aside amount is modified as explained below. This results in a 24.3-million lb (11.02-million kg) summer flounder TAL, allocated 14.58 million lb (6.61-million kg) to the commercial sector and 9.72 million lb (4.40-million kg) to the recreational sector. The TAL was determined by the Summer Flounder Monitoring Committee to have a 50-percent probability of achieving the 2002 target F of 0.26, as specified in the FMP, if the 2001 TAL and assumed discard levels are not exceeded.

The proposed rule reflected the Council's and Board's recommendation to set-aside 2 percent (485,943 lb; 220,420 kg) of the summer flounder TAL for scientific research activities through the process established by Framework Adjustment 2 to the FMP. This process resulted in publication of a Request for Proposals that solicited proposals for 2002, based upon the research priorities identified by the Council (66 FR 38636, July 25, 2001, and 66 FR 45668, August 29, 2001). The

deadline for submission of proposals was September 14, 2001. No research project proposals were recommended for approval that would utilize the summer flounder research set-aside. As

a result, this final rule does not establish a research quota set-aside for summer flounder and the entire TAL is available to the commercial and recreational fisheries.

Table 1 presents the final 2001 commercial summer flounder quota for each state, reported 2001 landings for each state through October 31, 2001, and resultant 2001 quota overages.

TABLE 1.— SUMMER FLOUNDER PRELIMINARY COMMERCIAL 2001 LANDINGS BY STATE

| State              | 2001 Quota <sup>1</sup> |                 | Reported 2001 Landings through 10/31/01 |                 | Preliminary 2001 Overage |                 |
|--------------------|-------------------------|-----------------|-----------------------------------------|-----------------|--------------------------|-----------------|
|                    | Lb                      | Kg <sup>2</sup> | Lb                                      | Kg <sup>2</sup> | Lb                       | Kg <sup>2</sup> |
| ME                 | 2,146                   | 973             | 22,017                                  | 9,987           | 19,871                   | 9,013           |
| NH                 | 100                     | 45              | 0                                       | 0               | .....                    | .....           |
| MA                 | 647,169                 | 293,551         | 702,710                                 | 318,744         | 55,451                   | 25,193          |
| RI                 | 1,724,507               | 782,223         | 1,387,418                               | 629,322         | .....                    | .....           |
| CT                 | 241,517                 | 109,550         | 232,941                                 | 105,660         | .....                    | .....           |
| NY                 | 834,599                 | 378,568         | 740,578                                 | 335,920         | .....                    | .....           |
| NJ                 | 1,743,704               | 790,931         | 1,544,955                               | 700,780         | .....                    | .....           |
| DE                 | <sup>3</sup> (41,708)   | (18,918)        | 4,532                                   | 2,056           | (46,240)                 | (20,974)        |
| MD                 | 193,970                 | 87,983          | 178,585                                 | 81,005          | .....                    | .....           |
| VA                 | 2,377,721               | 1,078,516       | 1,557,227                               | 706,346         | .....                    | .....           |
| NC                 | 2,651,470               | 1,202,687       | 1,804,943                               | 818,708         | .....                    | .....           |
| Total <sup>4</sup> | 10,416,903              | 4,725,028       | 8,175,906                               | 3,708,528       | .....                    | .....           |

<sup>1</sup> Reflects quotas as published on September 12, 2001 (66 FR 47413).

<sup>2</sup> Kilograms are as converted from pounds and may not necessarily add due to rounding.

<sup>3</sup> Parentheses indicate a negative number.

<sup>4</sup> Total quota is the sum of all states having allocation. A state with a negative number has an allocation of zero (0). Total quota and total landings do not equal the overage because they reflect positive quota balances in several states.

Based upon 2001 landings through October 31, 2001, NMFS adjusts the 2002 commercial quotas for 2001 quota

overages. The 2002 initial quota, 2001 quota overages, and preliminary

adjusted commercial quotas, by state, for 2002 are presented in Table 2.

TABLE 2.— FINAL STATE-BY-STATE COMMERCIAL SUMMER FLOUNDER ALLOCATIONS FOR 2002

| State              | Percent Share | 2002 Initial Quota |                 | 2001 Quota Overages (through 10/31/01) |                       | Adjusted 2002 Quota   |                       |
|--------------------|---------------|--------------------|-----------------|----------------------------------------|-----------------------|-----------------------|-----------------------|
|                    |               | Lb                 | Kg <sup>1</sup> | Lb                                     | Kg <sup>1</sup>       | Lb                    | Kg <sup>1</sup>       |
| ME                 | 0.04756       | 6,933              | 3,145           | 19,871                                 | 9,013                 | (12,938) <sup>2</sup> | (5,868) <sup>2</sup>  |
| NH                 | 0.00046       | 67                 | 30              | .....                                  | .....                 | 67                    | 30                    |
| MA                 | 6.82046       | 994,306            | 451,010         | 55,451                                 | 25,193                | 938,765               | 425,817               |
| RI                 | 15.68298      | 2,286,310          | 1,037,053       | .....                                  | .....                 | 2,286,310             | 1,037,053             |
| CT                 | 2.25708       | 329,044            | 149,258         | .....                                  | .....                 | 329,044               | 149,252               |
| NY                 | 7.64699       | 1,114,800          | 505,665         | .....                                  | .....                 | 1,114,800             | 505,665               |
| NJ                 | 16.72499      | 2,438,217          | 1,105,957       | .....                                  | .....                 | 2,438,217             | 1,105,957             |
| DE                 | 0.01779       | 2,593              | 1,176           | (46,240) <sup>2</sup>                  | (20,974) <sup>2</sup> | (43,647) <sup>2</sup> | (19,798) <sup>2</sup> |
| MD                 | 2.03910       | 297,266            | 134,838         | .....                                  | .....                 | 297,266               | 134,838               |
| VA                 | 21.31676      | 3,107,619          | 1,409,592       | .....                                  | .....                 | 3,107,619             | 1,409,592             |
| NC                 | 27.44584      | 4,001,133          | 1,814,883       | .....                                  | .....                 | 4,001,133             | 1,814,883             |
| Total <sup>3</sup> | 100.00        | 14,578,288         | 6,612,600       | .....                                  | .....                 | 14,513,221            | 6,583,086             |

<sup>1</sup> Kilograms are as converted from pounds and may not necessarily add due to rounding.

<sup>2</sup> Parentheses indicate a negative number.

<sup>3</sup> Total quota is the sum of all states having allocation. A state with a negative number has an allocation of zero (0).

The Commission has established a system whereby 15 percent of each state's quota would be voluntarily set aside each year to enable vessels to land an incidental catch allowance after the directed fishery has been closed. The intent of the incidental catch set-aside is to reduce discards by allowing fishermen to land summer flounder caught incidentally in other fisheries during the year, while also ensuring that

the state's overall quota is not exceeded. These Commission set-asides are not included in these 2002 final specifications, because NMFS does not have authority to establish such subcategories.

#### Delaware and Maine Summer Flounder Closures

Table 2 above indicates that, for the States of Delaware and Maine, the amount of the 2001 summer flounder

quota overage is greater than the amount of commercial quota allocated to the states for 2002. As a result, there is no quota available for 2002 in either Delaware or Maine. The regulations at § 648.4 (b) provide that Federal permit holders agree, as a condition of their permit, not to land summer flounder in any state that the Regional Administrator has determined no longer has commercial quota available for

harvest. Therefore, effective January 1, 2002, landings of summer flounder in Delaware and Maine by vessels holding commercial Federal fisheries permits are prohibited for the 2002 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 or Maine for the 2002 calendar year, unless additional quota becomes available through a transfer.

### Scup

The FMP established a target exploitation rate for scup of 21 percent for the 2002 fishing year. The total allowable catch (TAC) associated with the exploitation rate is allocated 78 percent to the commercial sector and 22

percent to the recreational sector by the FMP. Scup discard estimates are deducted from both TACs to establish for both sectors (TAC - discards = TAL). The commercial TAL is then allocated on a coastwide basis to three quota periods: Winter I (January–April)–45.11 percent; Summer (May–October)–38.95 percent; and Winter II (Nov–December)–15.94 percent. The recreational harvest limit is allocated on a coastwide basis.

The proposed rule reflected the Council's and Board's recommendation to set-aside 3 percent (323,100 lb; 146,556 kg) of the scup TAL for scientific research activities through the process established by Framework Adjustment 2 to the FMP. Three research projects that utilized scup research quota have been recommended for approval. These three projects would utilize 222,775 lb (101,049 kg) of the scup research set-aside. The scup TAL

has been adjusted to reflect this research set-aside. If the NOAA Grants Office should disapprove any of these projects, the associated research quota will be restored to the scup TAL through publication of a rule by NMFS.

This final rule implements the specifications contained in the proposed rule, with the adjustment to the research quota set-aside as described; a scup TAC of 12.92 million lb (5.86 million kg); a research quota set-aside of 222,775 (101,049 kg); a TAL of 10.55 million lb (4.78 million kg); a commercial TAL of 7,834,522 lb (3,553,679 kg) and a recreational harvest limit of 2,712,703 lb (1,230,461 kg).

Table 3 presents the final 2001 commercial scup quota for each period, reported 2001 landings for the Winter I and Summer periods through October 31, 2001, and resultant 2001 quota overages.

TABLE 3.— SCUP PRELIMINARY 2001 COMMERCIAL LANDINGS BY QUOTA PERIOD AND 2001 OVERAGES

| Quota Period | 2001 Quota <sup>1</sup> |                 | Reported 2001 Landings through 10/31/01 |                  | 2001 Overages as of 10/31/01 |                  |
|--------------|-------------------------|-----------------|-----------------------------------------|------------------|------------------------------|------------------|
|              | Lb                      | Kg <sup>2</sup> |                                         |                  |                              |                  |
| Winter I     | 1,675,960               | 752,038         | 1,692,813                               | 767,847          | 16,853                       | 7,644            |
| Summer       | 1,128,832               | 512,030         | 1,623,783                               | 736,536          | 494,951                      | 224,506          |
| Winter II    | 708,469                 | 321,356         | n/a <sup>3</sup>                        | n/a <sup>3</sup> | n/a <sup>3</sup>             | n/a <sup>3</sup> |
| Total        | 3,495,261               | 1,585,424       | 3,316,596                               | 1,504,383        | .....                        | .....            |

<sup>1</sup> Reflects quotas as published on September 12, 2001 (66 FR 47413).

<sup>2</sup> Kilograms are as converted from pounds and may not necessarily add due to rounding.

<sup>3</sup> Not applicable.

Table 4 presents the initial 2002 commercial scup quota allocations with and without the research set-aside deduction, and the commercial possession limits being implemented through this final rule.

TABLE 4.— 2002 INITIAL COMMERCIAL SCUP QUOTA AND POSSESSION LIMITS

| Period             | Percent | TAC <sup>1</sup>          | Discards <sup>2</sup>  | Commercial Quota         |                          | Possession Limits   |       |
|--------------------|---------|---------------------------|------------------------|--------------------------|--------------------------|---------------------|-------|
|                    |         |                           |                        | W/O Research Set-Aside   | W/Research Set-Aside     | Lb                  | Kg    |
| Winter I           | 45.11   | 4,546,005<br>(2,062,033)  | 937,205<br>(425,109)   | 3,608,800<br>(1,636,924) | 3,534,153<br>(1,603,065) | 10,000 <sup>3</sup> | 4,536 |
| Summer             | 38.95   | 3,925,225<br>(1,780,452)  | 809,225<br>(367,058)   | 3,116,000<br>(1,413,394) | 3,051,546<br>(1,384,158) | n/a <sup>*</sup>    | ..... |
| Winter II          | 15.94   | 1,606,370<br>(728,637)    | 331,170<br>(150,216)   | 1,275,200<br>(578,421)   | 1,248,823<br>(566,456)   | 2,000               | 907   |
| Total <sup>4</sup> | 100.00  | 10,077,600<br>(4,571,122) | 2,077,600<br>(942,383) | 8,000,000<br>(3,628,739) | 7,834,522<br>(3,553,679) |                     |       |

<sup>1</sup> Total allowable catch in pounds (kilograms in parentheses).

<sup>2</sup> Discard estimates in pounds (kilograms in parentheses).

<sup>3</sup> The Winter I landing limit will drop to 1,000 lb (454 kg) upon attainment of 80 percent of the seasonal allocation.

<sup>4</sup> Totals subject to rounding error.

<sup>5</sup> Kilograms in parentheses.

\*n/a-Not applicable.

Table 5 presents the initial 2002 commercial scup quota allocations (with the research set-aside deductions), 2001

commercial quota overages for Winter I and Summer periods as of October 31,

2001, and the preliminary adjusted 2002 commercial scup quotas by period.

TABLE 5.— FINAL 2002 COMMERCIAL SCUP QUOTA ALLOCATIONS BY PERIOD

| Quota Period | 2002 Initial Quota <sup>1</sup> |                 | 2001 Quota Overages through 10/31/01 |                  | Preliminary 2002 Adjusted Quota |                 |
|--------------|---------------------------------|-----------------|--------------------------------------|------------------|---------------------------------|-----------------|
|              | Lb                              | Kg <sup>2</sup> | Lb                                   | Kg <sup>2</sup>  | Lb                              | Kg <sup>2</sup> |
| Winter I     | 3,534,153                       | 1,603,065       | 16,853                               | 7,644            | 3,517,300                       | 1,595,420       |
| Summer       | 3,051,546                       | 1,384,158       | 494,951                              | 224,506          | 2,556,595                       | 1,159,652       |
| Winter II    | 1,248,823                       | 566,456         | n/a <sup>3</sup>                     | n/a <sup>3</sup> | 1,248,823                       | 566,456         |
| Total        | 7,834,522                       | 3,553,679       | 511,804                              | 232,150          | 7,322,718                       | 3,321,529       |

<sup>1</sup> Reflects quotas with the research set-aside.<sup>2</sup> Kilograms are as converted from pounds and may not necessarily add due to rounding.<sup>3</sup> Not applicable.

To achieve the commercial quotas, this final rule implements a Winter I period (January-April) possession limit of 10,000 lb (4,536 kg), and a Winter II period (November-December) possession limit of 2,000 lb (907 kg). The Winter I possession limit will be reduced to 1,000 lb (453.6 kg) when 80 percent of the commercial quota is attained.

The existing minimum mesh size requirement for the directed scup trawl fishery is also modified by this final rule. The purpose of the modification is to protect recent strong scup year classes, most notably the 1997, 1999 and 2000 year classes. Recruitment of these strong year classes to the fishery is the primary reason why the scup TAL is being increased, even though the target exploitation rate has decreased. NMFS believes it is important to protect these strong scup year classes through gear modifications to ensure that the stock will continue to grow. The otter trawl gear modifications are as follows: For large nets, no more than 25 meshes of 4.5-inch (11.43-cm) mesh in the codend, with at least 100 meshes of 5.0-inch (12.70-cm) mesh forward of the 4.5-inch (11.43-cm) mesh; and for small nets with codends (including an extension) less than 125 meshes, the entire net must have 4.5-inch (11.43-cm) mesh or larger throughout. These minimum mesh sizes are applicable to

trawl vessels issued a scup moratorium permit that 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.

In the proposed rule, NMFS explained the reasons for its disapproval of the Council's and Commission Board's recommendation to allow trawl vessels using small mesh and fishing for non-exempt species into the scup Gear Restricted Areas (GRAs) without NMFS-certified observers, provided they use modified trawl nets with an escapement extension (45 meshes of 5.5-inch (13.97-cm) square mesh) between the body of the net and the codend. That explanation is not repeated here.

#### Black Sea Bass

The FMP established a target exploitation rate for black sea bass of 37 percent for the 2002 fishing year. The TAL associated with the exploitation rate is allocated 49 percent to the commercial sector and 51 percent to the recreational sector by the FMP. The commercial TAL is then allocated on a coastwide basis to four quarterly periods: Quarter 1 (January – March) –38.64 percent; Quarter 2 (April–June)–29.26 percent; Quarter 3 (July–September)–12.33 percent; and Quarter 4 (October–December)–19.77 percent. The recreational TAL is specified as a coastwide harvest limit. The total TAL

associated with the exploitation rate required by the FMP is 6.80 million lb (3.08 million kg).

The proposed rule reflected the Council's and Board's recommendation to set-aside 3 percent (204,000 lb; 92,533 kg) of the black sea bass TAL for scientific research activities through the process established by Framework Adjustment 2 to the FMP. Four research projects that utilize black sea bass research quota were recommended for approval by a review committee. These four projects would utilize 76,005 lb (34,475 kg) of the black sea bass research set-aside. The black sea bass TAL has been adjusted in this final rule to reflect this research set-aside. If the NOAA Grants Office disapproves any of these projects, the associated amount of research quota will be restored to the black sea bass TAL through publication of a rule by NMFS.

As a result, a TAL of 6.72 million lb (3.05 million kg) is being implemented through this final rule. This results in a commercial TAL of 3,294,758 lb (1,494,477 kg) and a recreational harvest limit of 3,429,237 lb (1,555,476 kg).

Table 6 presents the final 2001 commercial black sea bass quota for each quarter, reported 2001 landings for Quarter 1, Quarter 2 and Quarter 3 through October 31, 2001, and resultant 2001 quota overages.

TABLE 6.— BLACK SEA BASS PRELIMINARY 2001 COMMERCIAL LANDINGS BY QUARTER AND 2001 OVERAGES

| Quarter   | 2001 Quota <sup>1</sup> |                 | Reported 2001 Landings through 10/31/01 |                  | 2001 Overages as of 10/31/01 |                  |
|-----------|-------------------------|-----------------|-----------------------------------------|------------------|------------------------------|------------------|
|           | Lb                      | Kg <sup>2</sup> | Lb                                      | Kg <sup>2</sup>  | Lb                           | Kg <sup>2</sup>  |
| Quarter 1 | 1,168,760               | 530.141         | 1,221,802                               | 554,200          | 53,042                       | 24,059           |
| Quarter 2 | 645,942                 | 292,994         | 753,780                                 | 341,909          | 107,838                      | 48,914           |
| Quarter 3 | 311,902                 | 141,476         | 318,045                                 | 144,263          | 6,143                        | 2,786            |
| Quarter 4 | 575,231                 | 260,920         | n/a <sup>3</sup>                        | n/a <sup>3</sup> | n/a <sup>3</sup>             | n/a <sup>3</sup> |
| Total     | 2,701,835               | 1,225,532       | 2,293,627                               | 1,040,372        | .....                        | .....            |

<sup>1</sup> Reflects quotas as published on September 12, 2001 (66 FR 47413).<sup>2</sup> Kilograms are as converted from pounds and may not necessarily add due to rounding.<sup>3</sup> Not applicable.

Table 7 presents the initial 2002 commercial black sea bass quota

allocations with and without the research set-aside deduction, and the

commercial possession limits being implemented through this final rule.

TABLE 7.— 2002 INITIAL COMMERCIAL BLACK SEA BASS QUOTA AND POSSESSION LIMITS

| Quarter            | Percent | Commercial Quota                         |                              | Possession Limits |       |
|--------------------|---------|------------------------------------------|------------------------------|-------------------|-------|
|                    |         | TAL <sup>1</sup> W/O Re-search Set-Aside | TAL With Re-search Set-Aside | Lb                | Kg    |
| Quarter 1          | 38.64   | 1,287,485<br>(583,993) <sup>2</sup>      | 1,273,094<br>(577,466)       | 7,000             | 3,175 |
| Quarter 2          | 29.26   | 974,943<br>(442,227)                     | 964,046<br>(437,284)         | 2,000             | 907   |
| Quarter 3          | 12.33   | 410,836<br>(186,352)                     | 406,244<br>(184,269)         | 2,000             | 907   |
| Quarter 4          | 19.77   | 658,736<br>(298,798)                     | 651,374<br>(295,458)         | 2,000             | 907   |
| Total <sup>2</sup> | 100.00  | 3,332,000<br>(1,511,370)                 | 3,294,758<br>(1,494,477)     |                   |       |

<sup>1</sup> Total allowable landings in pounds (kilograms in parentheses).

<sup>2</sup> Totals subject to rounding error.

Table 8 presents the initial 2002 commercial black sea bass quota allocations (with the research set-aside

deductions), 2001 commercial quota overages for Quarters 1–3 as of October 31, 2001, and the preliminary adjusted

2002 commercial black sea bass quotas by period.

TABLE 8.— FINAL 2002 COMMERCIAL BLACK SEA BASS QUOTA ALLOCATIONS BY QUARTER

| Quarter   | 2002 Initial Quota <sup>1</sup> |                 | 2001 Quota Overages through 10/31/01 |                  | Preliminary 2002 Adjusted Quota |                 |
|-----------|---------------------------------|-----------------|--------------------------------------|------------------|---------------------------------|-----------------|
|           | Lb                              | Kg <sup>2</sup> | Lb                                   | Kg <sup>2</sup>  | Lb                              | Kg <sup>2</sup> |
| Quarter 1 | 1,273,094                       | 577,466         | 53,042                               | 24,049           | 1,220,052                       | 553,406         |
| Quarter 2 | 964,046                         | 437,284         | 107,838                              | 48,914           | 856,208                         | 388,369         |
| Quarter 3 | 406,244                         | 184,269         | 6,143                                | 2,786            | 400,101                         | 181,483         |
| Quarter 4 | 651,374                         | 295,458         | n/a <sup>3</sup>                     | n/a <sup>3</sup> | 651,374                         | 295,458         |
| Total     | 3,294,758                       | 1,494,477       | .....                                | .....            | 3,127,735                       | 1,418,717       |

<sup>1</sup> Reflects quotas with the research set-aside.

<sup>2</sup> Kilograms are as converted from pounds and may not necessarily add due to rounding.

<sup>3</sup> Not applicable.

To achieve the commercial quotas, this final rule implements possession limits of 7,000 lb (3,175 kg) for Quarter 1 (January–March), and 2,000 lb (907 kg) for Quarters 2–4 (April–December). It also implements measures to protect recent strong year classes of black sea bass. These measures include: (1) An increase in the commercial minimum black sea bass fish size from 10 inches (25.4 cm) to 11 inches (27.94 cm); (2) a modification of the trawl net minimum mesh size such that large trawl nets are required to possess a minimum of 75 meshes of 4.5-inch (11.43-cm) diamond mesh in the codend or, for nets with codends less than 75 meshes, the entire net must have a minimum mesh size of 4.5 inches (11.43 cm) throughout; (3) a decrease in the black sea bass possession limit that triggers the requirement to utilize the black sea bass minimum mesh size from 1,000 lb (453.6 kg) year-round to 500 lb (226.8 kg) during Quarter 1 (January–March),

and 100 lb (45.3 kg) during Quarters 2–4 (April–December); and (4) an increase in black sea bass pot and trap escape vent sizes to 2 and 3/8-inch (6.03 cm) circular, 2-inch (5.08 cm) square, or 1 and 3/8-inch (3.49 cm) x 5 and 3/4-inch (14.61 cm) rectangular. The gear modifications are consistent with the commercial minimum fish size of 11 inches (27.94-cm).

In the proposed rule, NMFS specifically sought public comment on the most appropriate sizes for black sea bass escape vents for an 11-inch (27.94 cm) minimum commercial fish size. While a few comments were received on various aspects of this proposal, the information provided does not present a consensus view that could be used as the basis for a change from the proposed measures.

#### Changes from Proposed Rule

The Council submitted a comment that proposed regulatory text pertaining

to the size of escape vents in black sea bass pots and traps should be modified. Specifically, the proposed regulations did not propose to amend the regulations pertaining to the spacing between lathes in wooden traps. The Council clarified that the space between the wooden lathes in a wooden trap should be equal to the shortest space separating the sides of the rectangular escape vent, or 1 and 3/8 inches (3.49 cm). These final regulations reflect this clarification in § 648.144 (b)(2).

#### Comments and Responses

Eleven comments were received on the proposed measures from commercial fishing industry participants, law firms and organizations representing the commercial fishing industry, a group of environmental advocacy organizations, a state marine fisheries agency, and the Council. All comments received prior to the close of the comment period that directly related to the measures in the

proposed rule were considered in developing the measures contained in this final rule. Several commenters raised issues associated with the management of these species that were beyond the scope of the proposed measures. This final rule does not respond to such comments.

*Comment 1:* Comments were received both supporting and opposing NMFS' disapproval of the measure that would have allowed vessels fishing with small mesh for non-exempted species access to the GRA's, provided they used modified trawl nets (possessing an escapement extension of 45 meshes of 5.5-inch (13.97-cm) square mesh between the body of the net and the codend). One group of commenters supported the disapproval, noting that it would be premature to relax GRA restrictions on the basis of limited, although promising, gear research, especially without mandatory observer coverage. Three commenters, including the Council, opposed the disapproval. They expressed concern that NMFS did not rely more heavily on the research report on the proposed gear, or on industry advice and experience to support adoption of this measure. One commenter indicated that NMFS should have relied on the research report because it represents the best available science.

*Response:* In the proposed rule, NMFS clearly articulated its rationale for disapproval of the recommended measure. In summary, the research upon which the recommendation was based, although promising, is too preliminary to justify a universal exemption for all vessels at all times. NMFS notes that the draft report referred to by the commenters states that, "It does not necessarily follow that this solution (modified trawl gear) will work for vessels of all sizes, in all areas or at all times." Two of the projects that will utilize the scup research quota set-aside are intended to test and develop gear modifications to address scup bycatch in small-mesh fisheries. NMFS is hopeful that these projects, and others, will provide more comprehensive information that can be used in developing future management measures to reduce scup discard mortality.

*Comment 2:* Two commenters, including the Council, suggested that NMFS' disapproval of the exemption to allow small-mesh vessels to fish for non-exempt species in the GRAs when deploying modified trawl gear would prevent the *Loligo* squid fishery from attaining its annual commercial quota. The Council provided 2001 landings

data showing that the quarterly quotas have not been attained.

*Response:* NMFS acknowledges that the *Loligo* quotas allocated to each quarterly period in 2001 have not been attained. NMFS disagrees, however, that it is possible to conclude, based on one year of landings data, that GRAs are the reason quotas are not being attained. GRAs were in place for the 2000 fishing year, though with different boundaries, and commercial landings approached or exceeded the *Loligo* squid commercial quotas that year. In any case, NMFS believes that there is a critical need to protect scup from excessive discard mortality in small-mesh fisheries.

*Comment 3:* A state marine fisheries agency expressed concern about the magnitude of the 2001 Summer period scup quota overage, and suggested that NMFS should reconsider making the 2002 overage deduction. The commenter acknowledged that the large overage was the result of the higher Summer period quota established by the Commission, but believes that the Commission action was legitimate. The commenter was concerned that the large quota deduction in 2002 will widen the gap between Federal and state permit holders in future years and will eventually result in a minuscule Federal Summer period scup quota.

*Response:* NMFS shares this concern about divergence between the quotas established by state and Federal management agencies. NMFS has specifically noted concern about the Summer period scup quota on several occasions, and has explained that the FMP requires NMFS to deduct any overages of the commercial quota from that period's allocation for the following year. Under the current FMP, NMFS is legally prevented from taking any action to "reconsider" this requirement through this final rule, due to the requirements of the FMP.

*Comment 4:* One commenter opposed the proposed black sea bass TAL because it is higher than the TAL recommended by the Black Sea Bass Monitoring Committee. The commenter stated that NMFS did not provide adequate justification for the higher black sea bass TAL and requested that NMFS demonstrate that the higher TAL has a 50-percent chance of attaining the target fishing mortality rate ( $F = 0.37$ ) for black sea bass.

*Response:* The commenter referred to a target  $F$  rate of  $F=0.37$ . In fact, the FMP does not specify a target  $F$  rate. Rather, it specifies a target exploitation rate of 37 percent, because the data available for this fishery cannot support an estimate of  $F$ . The TAL is established using the target exploitation rate

because it can be calculated using data that are available for this fishery (i.e., the NEFSC spring survey abundance index). Similarly, the quality of the assessment data for this species does not allow for a precise estimate of the probability of achieving the target exploitation rate.

The increased TAL is directly related to the other conservation measures being enacted to protect recent strong year classes of black sea bass. These include: (1) An increase in the minimum fish size from 10 inches (25.4 cm) to 11 inches (27.9 cm); (2) a 1/2-inch (1.27-cm) increase in the minimum trawl mesh size; (3) an increase in escape vent sizes for black sea pots and traps; and (4) a decrease in the possession limit that triggers the requirement to utilize the black sea bass minimum mesh size from 1,000 lb (453.6 kg) year-round to 500 lb (226.8 kg) in Quarter 1 and 100 lb (45.3 kg) in Quarters 2 through 4. NMFS believes it is reasonable to anticipate that the conservation benefits associated with these gear changes will offset the increase in the TAL.

NMFS anticipates that a significant number of additional small fish (< 11 inches (27.9 cm)) will escape, grow and reproduce as a result of these measures. The information that is available indicates that a minimum fish size of 11 inches (27.9 cm) corresponds to the  $L_{25}$  (length at which 25 percent of fish are retained) associated with the increased minimum mesh size in the trawl fishery, and the  $L_{50}$  (length at which 50 percent of fish are retained) associated with the increase in escape vent sizes. Also, a recent study indicates substantive changes in selectivity using a rectangular vent size similar to that recommended by the Council.

NMFS acknowledges that, if overall fishing effort and exploitation are high, any increase in spawning stock biomass as a result of the gear changes would not be realized. However, relative exploitation indices in the black sea bass fishery have significantly declined since 1998. The combination of this trend of decreasing exploitation and the conservative gear modifications support the higher TAL.

NMFS is also giving consideration to the importance of maintaining a consistent TAL between state and Federal waters. Past instances of divergent TALs, such as that noted in Comment 3, have weakened the effectiveness of the management program. NMFS prefers, when possible, to implement measures that are consistent with those enacted by the states.

Comment 5: One commenter wrote in support of the proposed black sea bass possession limits of 7,000 lb (3,175 kg) for Quarter 1, and 2,000 lb (907 kg) for Quarters 2-4. The commenter suggested that the higher trip limits in Quarters 2-4 were necessary to provide flexibility to the states, which are considering whether to establish more restrictive landing limits. Two other commenters were opposed to the proposed black sea bass possession limits, and recommended adoption of the possession limits recommended by the Black Sea Bass Monitoring Committee: 7,000 lb (3,175 kg) in Quarter 1; 1,000 lb (453.6 kg) in Quarter 2; 2,500 lb (226.8 kg) in Quarter 3; and 750 lb (340.2 kg) in Quarter 4. One of the commenters opposed to the proposed landing limits contended that the higher limits would create a derby-style fishery, wreak havoc with prices, and result in a early closures of the quarterly fisheries.

*Response:* The establishment of black sea bass possession limits has been a contentious issue since the FMP was first fully implemented in 1996. Through this final rule, NMFS is implementing the possession limits that were recommended by the Council at its August 2001 meeting. These possession limits were chosen as an appropriate balance between the economic concerns expressed by industry members, who sought sufficient landings to make a trip economically viable, and the objective of maintaining quota availability over the entire quota period. The Commission's Black Sea Bass Board tabled its motion on possession limits for further discussion. The higher Federal limits imposed through this final rule facilitate the implementation by the states of more restrictive landings limits, and provide the states with flexibility in designing management measures appropriate to their fisheries.

Comment 6: One commenter opposed the increase in black sea bass escape vent sizes, stating that wooden pots and wire pots would have to be modified at great cost as a result of the regulation. The commenter felt that the management measure would never pass a cost-benefit analysis.

*Response:* Black sea bass are over-exploited and at a low biomass level. However, recruitment indices indicate that exceptionally large year classes were produced in 1999 and 2000. Preliminary results indicate a poor 2001 year class. Therefore, the 1999 and 2000 black sea bass year classes must be protected in order to allow for these fish to grow to maturity so they can reproduce and contribute to stock rebuilding. As a result, the commercial

minimum fish size is being increased to 11 inches (27.94 cm). It is necessary when increasing the minimum fish size to implement measures that will modify the gear used in the fishery appropriately. Otherwise, fish smaller than the minimum size will suffer unnecessary mortality which would reduce the effectiveness of the minimum size measure. The increase in the vent sizes is one such measure.

The Council analysis concluded that the cost of replacing escape vents would be minimal and indicated that some industry members are already using escape vents consistent with the new requirement. It is expected that these measures will ultimately produce both short and long-term benefits as the black sea bass stock continues to rebuild and TALs are correspondingly increased.

Comment 7: One commenter supported the proposed escape vent sizes for black sea bass pots and traps. Another commenter supported the proposed sizes for circular (2-3/8 inch (6.03-cm)) and square (2-inch (5.08-cm)) escape vents, but was strongly opposed to the proposed rectangular escape vent size (1-3/8 x 5-3/4 inches (3.49 x 14.60 cm)). The commenter stated that, according to a 1994 study, the proposed rectangular escape vent size would allow 50-percent more 11-inch (27.94-cm) fish to escape than a 1-1/4 x 5-3/4-inch (3.175 x 14.60-cm) escape vent. The commenter was also opposed to any increase beyond 1-1/4 inches in the separation of lathes in wooden pots. Another commenter suggested requiring a 2-inch (5.08-cm) mesh panel in the entire backside of the black sea bass traps. The Council also commented, as noted earlier, that the regulations associated with lathe spacing in wooden pots must also be modified.

*Response:* The Council initially adopted the 1-3/8 x 5-3/4-inch (3.49 x 14.60-cm) rectangular black sea bass escape vent size at the suggestion of industry members that attended the August 2001 Council meeting. In the proposed rule, NMFS specifically requested additional comment from industry members concerning the appropriate sizes for escape vents for an 11-inch (27.94-cm) minimum fish size. NMFS received few comments on this issue, and does not believe there is a basis to modify the proposed measures. NMFS is making the lathe spacing change recommended by the Council for consistency.

Comment 8: One commenter indicated that fishermen will not benefit from an 11-inch (27.94-cm) minimum black sea bass fish size because there will be fewer small fish to sell and

prices for larger fish will decrease. The commenter disputed the conclusion in the Initial Regulatory Flexibility Analysis (IRFA) that vessels are likely to experience increased revenues in 2002 compared to 2001 because the commenter believes that the market for black sea bass has been severely damaged by fishery closures and reopenings.

*Response:* It is not possible to predict accurately the direction and magnitude of price changes for large fish that may result as a consequence of this rule. Therefore, the IRFA relied upon prices from 2000. The IRFA concluded that vessels will land more medium-sized fish and fewer smaller-sized fish as a result of increasing the minimum fish size. Because larger fish have historically commanded a higher price per pound, the IRFA concluded that fishers would benefit from the increase in minimum fish size. The overall conclusion in the IRFA that vessels would experience increased revenues in 2002 is based upon the fact that the commercial black sea bass quota is being increased. It is possible that the commenters point could prove to be true. However, if it does, it would not change the selection of the preferred action because increasing the minimum fish size and the associated gear modifications are necessary to protect recent strong year classes and, also, to support the recommended black sea bass TAL.

### Classification

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

This action establishes annual quotas and related management measures for the summer flounder, scup and black sea bass fisheries. If implementation of the quota provisions and other management measures is delayed, NMFS will be prevented from carrying out its function of preventing overfishing of these three species. The fisheries covered by this action will begin making landings on January 1, 2002. If a delay in effectiveness is required, and a quota were to be harvested during a delayed effectiveness period, the lack of effective quota specifications would prevent NMFS from closing the fishery. This could result in large overages that would have distributional effects on other quota periods and might potentially disadvantage some gear sectors. Therefore, with the exception of the sections pertaining to gear modifications, the Assistant Administrator for Fisheries, NOAA, finds good cause under 5 U.S.C. 553



(d)(3) to waive the 30-day delayed effectiveness period for the quotas and other management measures, and for the closures of the fisheries in the States of Delaware and Maine. In order to provide sufficient time for industry participants to make the gear modifications required by §§ 648.14(a)(92), 648.14(u)(1), 648.123(a)(1), 648.143 (a), 648.144 (a)(1)(i), 648.144 (b)(2) and 648.145 (d), NMFS is delaying the effectiveness of these measures for 60 days following the date of publication in the **Federal Register**.

This rule does not contain policies with federalism implications, as that term is defined in Executive Order 13132.

The Council and NMFS prepared a Final Regulatory Flexibility Analysis (FRFA) for this action. The FRFA includes comments on the IRFA, responses contained herein, and a summary of the analyses done in support of these specifications. A copy of the analysis is available from the Regional Administrator (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 in its entirety here. A summary of the FRFA follows:

A description of the reasons why action by the agency is being taken and the objectives of this final rule are explained in the preambles to the proposed rule and this final rule and are not repeated here. This action does not contain any collection-of-information, reporting, or recordkeeping requirements. It does not duplicate, overlap, or conflict with any other Federal rules.

#### Public Comments

Eleven comments were received on the measures contained in the proposed rule. Comments did not refer specifically to the IRFA, but several were related to economic impacts on small entities (see responses to comments 5, 6 and 8 in the preamble of this final rule). No changes were made to the measures outlined in the proposed rule as a result of these comments.

#### Number of Small Entities

The Council estimates that the proposed 2002 quotas and management measures could affect 1,969 vessels with

a Federal summer flounder, scup, and/or black sea bass permit, as of September 5, 2000. However, the more immediate impact of this rule will likely be felt by the 1,038 vessels that actively participated in these fisheries in 2000 (as demonstrated by having landed these species). These 1,038 vessels include vessels holding only state permits.

#### Minimizing Significant Economic Impact on Small Entities

In the FRFA, NMFS analyzed the measures being implemented in this action. Economic impacts are being minimized to the extent practicable with the measures being implemented in this final rule, while being consistent with the target fishing mortality rates or target exploitation rates specified in the FMP. The FRFA analysis compared the effects of the 2002 measures, following adjustment for known overages at the time of the analysis, to 2000 landings, the most recent year for which complete data are available. Three alternative combinations of summer flounder, scup and black sea bass landings (commercial and recreational) were evaluated (see Table 9 below).

TABLE 9.—COMPARISON OF THE ALTERNATIVE COMBINATIONS OF COASTWIDE COMMERCIAL QUOTA AND RECREATIONAL HARVEST LIMITS REVIEWED. "FLK" IS SUMMER FLOUNDER.

|                                                    | Commercial Quota | Recreational Harvest Limit |
|----------------------------------------------------|------------------|----------------------------|
| Quota Alternative 1 (Preferred Alternative)        |                  |                            |
| FLK Preferred Alternative                          | 14,578,288       | 9,720,000                  |
| Scup Preferred Alternative                         | 8,000,000        | 2,770,000                  |
| Black Sea Bass Preferred Alternative               | 3,332,000        | 3,470,000                  |
| Quota Alternative 2 (Status Quo, Most Restrictive) |                  |                            |
| FLK Status Quo                                     | 10,747,535       | 7,160,000                  |
| Scup Status Quo                                    | 4,444,600        | 1,770,000                  |
| Black Sea Bass Status Quo                          | 3,024,770        | 3,150,000                  |
| Quota Alternative 3 (Least Restrictive)            |                  |                            |
| FLK Non-Selected Alternative 3                     | 20,878,658       | 13,900,000                 |
| Scup Non-Selected Alternative 3                    | 9,530,000        | 3,200,000                  |
| Black Sea Bass Non-Selected Alternative 3          | 3,970,960        | 4,130,000                  |

The measures implemented by this rule would likely result in revenue increases for the 1,038 commercial vessels expected to be impacted by this rule. Alternative 3 would have established quotas higher than those established by this rule for each of the three species. This alternative would likely result in revenue increases to the 1,038 commercial vessels expected to be impacted under this rule, greater than the expected revenue increases under the preferred alternative. However, alternative 3 was not selected for implementation because these quotas are too risk prone in terms of achieving

the FMP's annual target F levels or target exploitation rates.

The impacts of the three alternatives on recreational fishers were evaluated by comparing the recreational harvest limits to the recreational landings in 2000, the most recent year for which complete data are available. For both summer flounder and scup, any of the three alternatives considered would require more restrictive management measures to be established, because landings in 2000 exceeded even the highest recreational harvest limit in Alternative 3. For black sea bass, Alternative 3 may have allowed management measures to be less

restrictive because Alternative 3 represents a 14-percent increase in the recreational harvest limit. However, black sea bass Alternative 2 establishes a harvest limit nearly identical to the 2000 recreational landings level, so it is not expected to have negative impacts. The effect of more restrictive recreational measures cannot be estimated, but could affect demand for party/charter boat trips. However, party/charter activity in the 1990s has remained relatively stable, so the effects are expected to be minimal.

The modification of the level at which the scup Winter I possession limit is decreased from 10,000 lb (4,536 kg) to

1,000 lb (453 kg) is modified slightly by this rule. Previously, the possession limit was decreased when 75 percent of the quota allocated to the Winter I period was projected to be harvested; this rule modifies the level to 80 percent. This change is anticipated to have a minimal impact on the fishery.

The gear modifications required for participants in the scup and black sea bass fisheries do not modify the amount of quota allocated to the fishery, and therefore, are not projected to impact revenues directly. The modifications themselves will have associated costs, estimated at \$775 to \$1,354 per net for the trawl gear requirement. The costs associated with changes to the vent sizes in pot and trap gear are projected to be minimal.

The change to the minimum fish size for black sea bass landed by the commercial fishery is projected to generate a benefit to fishers, based on the fact that fishers received a higher price per pound for fish in the larger size category in 2000.

This rule does not establish a research quota set-aside for summer flounder, but does establish such set-asides for scup and black sea bass. The existence of the set-asides does not alter the total revenues in any of the three fisheries, since the fish are projected to be harvested either by the commercial and recreational fisheries, or through research-related activity.

In summary, the commercial quotas and recreational harvest limits contained in this final rule will result in increased landings and revenues for each of the species, most notably for summer flounder and scup, yet still achieve the fishing mortality and exploitation targets specified in the FMP. While the commercial quotas and recreational harvest limits specified in Alternative 3 would provide for even larger increases in landings and revenues, they would not achieve the fishing mortality and exploitation targets specified in the FMP. The possession limits for scup and black sea bass that are being implemented balance the need to provide for economically viable fishing trips with the need to ensure an equitable distribution of the quota over the entire period. The gear modifications in the black sea bass fishery (increased minimum trawl mesh size and pot/trap escape vents) will impose some initial compliance costs, but are needed to complement the increase in minimum commercial fish size and the increase in the black sea bass TAL. Similarly, the modification to scup trawl nets will impose initial compliance costs, but will allow for additional escapement of undersized

fish and provide for future increases in exploitable biomass. The economic effects of the existing GRAs will not change as a result of this proposed rule. The disapproved alternative that would allow small-mesh vessels to fish for non-exempt species in the GRAs was not selected because the research supporting the alternative was deemed by NMFS to be too preliminary, and therefore, causative of an unacceptable risk to increased juvenile scup mortality. Finally, the revenue decreases associated with the research set-asides are expected to be minimal, and are expected to yield important long-term benefits associated with improved data. It should also be noted that fish harvested under the research set-asides would be sold. As such, total gross revenue to the industry would not decrease if the research set asides are utilized.

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

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: December 18, 2001.

**William T. Hogarth,**

*Assistant Administrator for Fisheries,  
National Marine Fisheries Service.*

For the reasons set out 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 § 648.14, paragraphs (a)(92) and (u)(1) are revised to read as follows:

##### § 648.14 Prohibitions.

(a) \* \* \*

(92) Fish for, catch, possess, land, or retain black sea bass in or from the EEZ north of 35°15.3 N. lat. (the latitude of Cape Hatteras Light, NC, to the U.S.-Canadian border) in excess of the amount specified in § 648.145 (a).

\* \* \* \* \*

(u) \* \* \*

(1) Fish for, catch, possess, land, or retain black sea bass in excess of the amount specified in § 648.144(a)(1)(i) (i.e. 500 lb (226.8 kg) from January 1 through March 31, or 100 lb (45.4 kg) from April 1 through December 31), unless the vessel meets the minimum mesh requirement specified in § 648.144 (a).

\* \* \* \* \*

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

##### § 648.123 Gear restrictions.

(a) \* \* \*

(1) *Minimum mesh size.* The owners or operators of otter trawlers who are issued a scup moratorium permit and who 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, must fish with nets that have a minimum mesh size of 4.5 inches (11.43 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 (11.43-cm) mesh. 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 (11.43 cm) throughout the net. Scup on board these vessels shall be stored separately and kept readily available for inspection.

\* \* \* \* \*

4. In § 648.143, paragraph (a) is revised to read as follows:

##### § 648.143 Minimum sizes.

(a) The minimum size for black sea bass is 11 inches (27.94 cm) total length for all vessels issued a moratorium permit under § 648.4 (a)(7) that fish for, possess, land or retain black sea bass in or from U.S. waters of the western Atlantic Ocean from 35° 15.3 N. Lat., the latitude of Cape Hatteras Light, North Carolina, northward to the U.S.-Canadian border. The minimum size may be adjusted for commercial vessels pursuant to the procedures in § 648.140.

\* \* \* \* \*

5. In § 648.144, paragraph (a)(1)(i) and (b)(2) are revised to read as follows:

##### § 648.144 Gear restrictions.

(a) \* \* \*

(1) \* \* \*

(i) Otter trawlers whose owners are issued a black sea bass moratorium permit and that land or possess 500 lb (226.8 kg) or more of black sea bass from January 1 through March 31, or 100 lb (45.4 kg) or more of black sea bass from April 1 through December 31, must fish with nets that have a minimum mesh size of 4.5 inch (11.43-cm) diamond mesh applied throughout the codend for at least 75 continuous meshes forward of the terminus of the net, or for codends with less than 75 meshes, the entire net must have a minimum mesh size of 4.5 inch (11.43-cm) diamond mesh throughout.

\* \* \* \* \*

(b) \* \* \*

(2) All black sea bass traps or pots must have an escape vent placed in a

lower corner of the parlor portion of the pot or trap that complies with one of the following minimum sizes: 1.375 inches (3.49 cm) by 5.75 inches (14.61 cm); or a circular vent 2.375 inches (6.03 cm) in diameter; or a square vent with sides of 2 inches (5.08 cm), inside measure; however, black sea bass traps constructed of wooden lathes may have instead an escape vent constructed by leaving a space of at least 1.375 inches (3.49 cm) between one set of lathes in the parlor portion of the trap. These dimensions for escape vents and lathe

spacing may be adjusted pursuant to the procedures in § 648.140.

\* \* \* \* \*

6. In § 648.145, paragraph (d) is revised to read as follows:

**§ 648.145 Possession limit**

\* \* \* \* \*

(d) Owners or operators of otter trawl vessels issued a moratorium permit under § 648.4 (a)(7) and fishing with, or possessing on board, nets or pieces of net that do not meet the minimum mesh requirements specified in § 648.144(a)

and that are not stowed in accordance with § 648.144 (a)(4), may not retain more than 500 lb (226.8 kg) of black sea bass from January 1 through March 31, or more than 100 lb (45.4 kg) of black sea bass from April 1 through December 31. Black sea bass on board these vessels shall be stored so as to be readily available for inspection in a standard 100-lb (45.4 kg) tote.

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